Supreme Court, U.S.
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OFFICE OF THE CLERK

No.

In The
Supreme Court of the United States

BENJAPON SAKKARAPOPE,
Petitioner

V.

THE BOARD OF REGENTS OF
WASHINGTON STATE UNIVERSITY,
AND
THE SECRETARY OF
THE UNITED STATES DEPARTMENT OF EDUCATION,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Volume I

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QUESTIONS PRESENTED FOR REVIEW

1. Do the provisions of 20 U.S.C. §1232g(a)(1); §1232g(f) and (g); and 34 C.F.R 99.60 et. seq. create a "federal right to inspect and review" education records" and a **"federal due process right"** or an **"administrative due process right"**? To the extent, are such rights protected under the Fourteenth Amendment and actionable against the Board of Regents, or a governing body, of an educational institution and/or the Secretary of the United States Department of Education pursuant to 42 U.S.C. §1983 where the rights have been deprived or violated by the decisions and/or actions of the designated officials under the Secretary or the Board of Regents?

2. Does the Court of Appeals' decision that "the district court also properly dismissed Sakkarapope's claims against the Secretary of Education because FERPA does not create a private right of action," apply and interpret *Gonzaga v. Doe*, 536 U.S. 273 (2002) beyond the scope of the original opinion of the Supreme Court because: (i) the Court's opinion and analysis in *Gonzaga v. Doe* was limited to the provision of §1232g(b), (ii) Gonzaga University is an educational institution, but the Secretary of the United States Department of Education is not, and (iii) the instant case is involved with §1232~~g(a)(1) and~~ the failure of the Secretary to perform its administrative duty under FERPA, 20 U.S.C. §1232g(f) and (g) to secure the "federal right to inspect and review" education records and **"federal due process right"** or an **"administrative due process right"**?

3. Does the instant case fall within the exception of *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 426, 432, and *Wilder v. Virginia Hospital Assn.*, 496 U.S. 498, 522-523, because the Board of Regents and the

Secretary violate and fail to secure the "federal right to inspect and review" education records and **"federal due process right"** or an **"administrative due process right,"** and Sakkarapope lackes any federal review mechanism to recourse from the Secretary's failure to perform its official duty?

4. Does Sakkarapope, or a student, have "a right to appeal or otherwise contest the FPCO's decision with respect to complaints filed under FERPA" pursuant to the federal Administrative Procedure Act (APA), 5 USC 554, 555, where the Secretary of the United States Department of Education closes his FERPA complaints "without a finding"? If such right exists, is it protected under the due process clause of the Fourteenth Amendment and actionable pursuant to 42 U.S.C. §1983?

5. Does an educational institution have authority to alter the jurisdiction of FERPA complaint to be filed in the state superior court and is the state trial court's Order Granting Respondents' Motion for Summary Judgment entered March 5, 2004, unconstitutional because: (i) a summary judgment proceeding is not authorized under the state APA, RCW 34.05 and (ii) the state court does not have jurisdiction to adjudicate FERPA complaints?

6. Is the District Court's order of June 22, 2004 unconstitutional because the proceedings in the district court violate Sakkarapope's due process right: (i) the District Court granted the BORs' motion summary judgment based on the state trial court order of March 5, 2004, and (ii) the District Court's other orders limited Sakkarapope's freedom to act in the proceedings, (iii) the District Court granted a summary judgment on behalf of the Secretary where it did not move for a partial summary judgment?

7. Is the Court of Appeals' decision that "...even if the State of Washington has waived its sovereign immunity to 42 U.S.C. §1983 actions in its own courts, it has not done so in the federal courts," *McConnell v. Critchlow*, 661 F.2d 116, 117 (9th Cir. 1981) unconstitutional because: (i) FERPA does not authorize the state court to hear any FERPA complaint, (ii) the state statue of RCW 4.92.010 is unconstitutional as to it violates the equal protection clause of the Fourteenth Amendment? Is a federal forum under this instant case permitted?

8. Does the Board of Regents of Washington State University immune from a suit in a federal court under the Eleventh Amendment where a FERPA due process right guaranteed by the Fourteenth Amendment, if exists, is violated and has been deprived?

9. Does the Court of Appeals' decision that "[t]he district court properly dismissed Sakkarapope's claims against defendant Board of Regents because the Board is not a "person" within the meaning of 42 U.S.C. §1983," *Thompson v City of Los Angeles*, 885 F. 2d 1439, 1443 (9th Cir. 1989), conflict with the statute of the State of Washington, RCW 1.16.080(1)?

10. Did Howard Grimes' actions violate and deprive Sakkarapope's due process rights guaranteed by the Fourteenth Amendment?

11. Do the doctrines of res judicata and collateral estoppel apply to the instant case?

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I. JURISDICTIONAL STATEMENTS

1. The United States Department of Education entered its decision denying Sakkarapope's FERPA Complaints pursuant to 20 U.S.C §1232g; 34 C.F.R. 99, and an application for adjudication pursuant to Administrative Procedure Act (APA) 5 U.S.C. 554. The Secretary of the United States Department of Education rendered its final decision by the Director of the Family Policy Compliance Office (FPCO) on January 20, 2004. (Appendix (App.) at 64-70)

2. The original Complaint was filed in the United States District Court, Eastern District of Washington (Spokane) on February 24, 2004.

3. The District Court has jurisdiction under Civil Rights Act 42 U.S.C. §1983; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C §1232g; 34 C.F.R. 99, and WAC 504-21; and Administrative Procedure Act (APA) 5 U.S.C. 554; 5 U.S.C. 555.

4. The District Court entered a final judgment on June 22, 2004, by Senior Judge Justin L. Quackenbush.

5. A Motion for Sanction was served May 25, 2004, and the District Court entered an order deciding Motion for Sanction on June 28, 2004.

6. A Notice of appeal was filed July 19, 2004. The appeal is from a final order of the District Court on Motion for Summary Judgment that disposes of all parties' claims. The Court of Appeals for the Ninth Circuit has jurisdiction to review a final order of the District Court. FRAP 3.

6. The Court of Appeals for the Ninth Circuit rendered its decision in an unpublished Memorandum filed February 22, 2006, by a panel of Circuit Judges, FERNANDEZ, RYMER, and BYBEE.

7. A petition for panel rehearing and rehearing en banc was filed April 6, 2006. The Court of Appeals for the Ninth Circuit rendered its decision denying the petition for panel rehearing and rehearing en banc on June 8, 2006, and a final judgment was entered June 27, 2006.

8. This PETITION FOR WRIT OF CERTIORARI is from a final judgment of the United States Court of Appeals for the Ninth Circuit affirming the District Court on Motion for Summary Judgment that disposes of all parties' claims. This Supreme Court has jurisdiction to review a final judgment of the Court of Appeals. 28 U.S.C §1254

II. CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THE CASE

1. The Fourteenth Amendment.
2. The Eleventh Amendment.
3. 20 U.S.C §1232g; 34 C.F.R. 99, and WAC 504-21. (App. at 99-122)
4. Federal Administrative Procedure Act (APA), 5 U.S.C. 554; 5 U.S.C. 555. (App. at 72-80)
5. State Administrative Procedure Act (APA), RCW 34.05. (App. at 81-95)
6. Civil Rights Act, 42 U.S.C. §1983.
7. WAC 504-04. (App. at 96-98)
8. RCW 4.92 (Actions and claims against state).

> RCW 4.92.010: Where brought — Change of venue. Any person or corporation having any claim against the state of Washington shall have a right of action against the state in the superior court. The venue for such actions shall be as follows: (1) The county of the

residence or principal place of business of one or more of the plaintiffs; (2) The county where the cause of action arose; (3) The county in which the real property that is the subject of the action is situated; (4) The county where the action may be properly commenced by reason of the joinder of an additional defendant; or (5) Thurston county.

Actions shall be subject to change of venue in accordance with statute, rules of court, and the common law as the same now exist or may hereafter be amended, adopted, or altered.

Actions shall be tried in the county in which they have been commenced in the absence of a seasonable motion by or in behalf of the state to change the venue of the action.

Notes: Severability -- 1963 c 159: "If any provision of this act, or its application to any persons or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 159 § 12.] Venue: Chapter 4.12 RCW.

9. RCW 1.16.080(1): "Person" — Construction of "association," "unincorporated association," and "person, firm, or corporation" to include a limited liability company.

(1) The term "person" may be construed to include the United States, this state, or any state or territory, or any public or private corporation or limited liability company, as well as an individual.

(2) Unless the context clearly indicates otherwise, the terms "association," "unincorporated association," and "person, firm, or corporation" or substantially identical terms shall, without limiting the application of any term to any other type of legal entity, be construed to include a limited liability company.

Notes: Reviser's note: This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:" Criminal proceedings, person defined: RCW 9A.04.110; Declaratory judgments, person defined: RCW 7.24.130; Eminent domain by cities, person defined: RCW 8.12.020; Notice to alien property custodian, person defined: RCW 4.28.340; Wrongful death, person defined: RCW 4.20.005.

10. *Gonzaga v. Doe*, 536 U.S. 273, 287 (2002).

III. STATEMENTS OF THE CASES AND FACTS[1]

1. In the year 2000, Sakkarapope had a dispute with Washington State University (University/WSU) in regard to the IIDP preliminary examination. Not only the University refused to disclose the records of the exam on the portion it claimed that Sakkarapope received failing grades and that of the appeal process, destroyed the records[2], and did not properly afford him a due process hearing under FERPA, but also Howard Grimes premeditatedly retaliated Sakkarapope by issuing a series of memoranda leading to the termination of January 31, 2003 from his joint master degree program in violation of his due process right. No hearing was afforded.

After Howard Grimes was appointed to Chair of the CGSRR and later the Dean of the Graduate School and while Sakkarapope was out of the country for his father-in-law funeral, Grimes, quietly, arbitrarily dropped Sakkarapope from the University system on 10/22/2002 without informing the student and consulting with his academic advisor and department chair. (Ct. Rec. 30 Exh. E). Grimes had begun searching for information to serve his personal purpose since

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[1] *See also*, additional details in Appendix at 138-145, 168-172, 177-179, 191-203, 253-269, 272-311, and 322-348..

[2] Per Kenneth Duft's email to Kirsten Pauli dated June 7, 2002.

on or about 8/26/20, with handwritten note, "Where is he—how did he get there." With a long campaigning of official misconduct, the termination of January 31, 2003, was arbitrarily again made by Grimes who has personal interest in the outcome of the termination, and then submitted its decision to the Immigration Authority. In cooperation with Grimes, Mary Furnari, an international student advisor, asked Mr. Danial Hanson, an immigration officer, to initiate the removal proceeding in her email of 6/9/2003:

> ...This student has been making numerous requests for evidence based on public records law at great expense in time and energy to university personnel. I wonder when a student is terminated in SEVIS, what does BCIS or ICE do about that student? Are they referred to Investigations? Can we hope that BICS or ICE might act on this student anytime soon?...

Mr. Hanson replied in his email of June 10, 2003: "I'll forward the case to Investigations." Subsequently, a removal proceeding[3] was initiated and the hearing was held on April 22, 2004.

Such termination and conspiracy are constituted retaliation by the University's officials while Sakkarapope was seeking available administrative relief. The agency's notes also indicate:

> (A) Dated 12/2/02, "Howard Grimes in exercise room. He may be willing to let Ben continue, but the letters (regarding appeal) have to stop."
>
> (B) Dated 12/6/02, "and earlier conversation: Hao Zhang (major professor) Believes that Ben is OK as far as degree, making 'normal progress.' Was surprised to hear that Grad School believes he is

[3] A Petition for Review of the Board of Immigration Appeals (BIA) has been pending in the Court of Appeals for the Ninth Circuit. A motion for consolidation of the two cases was denied.

finished at WSU. Knows about Ben's attempt to appeal results of comprehensive exams...."
(C) Dated 12/6/02, "Nancy Intermill, prog. Coordinator in Statistics says as far as they know Ben is OK to continue his program. Have not received anything from Grad School informing them otherwise....."
(D) Dated 4/11/03, "Zhang-.....reporting him if he could be persuaded to give up his appeal effort for Phd and be allowed to stay and finish M.S.? He can ask Ben next Thursday. I said I would check w/ Mary F." (Ct. Rec. 30 Exh. C).

After unsuccessful attempts through the University's President, an appeal before the Board of Regents was filed on January 13, 2003, and Provost Bates denied access to the Board on behalf of the Board. (Ct. Rec. 30 Exh. D).

To this date, the University has not yet disclosed the examination on the portions it claimed that Sakkarapope received failing grades and the records in the appeal process. Further, despite the FPCO already provided an interpretation of FERPA that:

> FERPA does permit the nonconsensual disclosure of education records in certain limited circumstances, such as when the disclosure is made in compliance with a lawfully issued subpoena or court order. CFR § 99.31(a)(9).... unless the subpoena is a Federal grand jury subpoena or other subpoena issued for a law enforcement purpose, and the subpoena contains a provision that the eligible student must not be informed of the existence of the subpoena, the institution must make a reasonable effort to notify the eligible student in advance of compliance with the subpoena. This permits the eligible student to seek

protective action from the court, such as limiting the scope of the subpoena...., (App. at 316-317),

WSU moved in the state Superior court to quash Sakkarapope's subpoenas of the records and sealed the records of the examinations in disputes. (App. at 26-35, 272-311, 336-348).

2. After unsuccessful attempts to exercise his rights to inspect and review his education records, Sakkarapope requested for a hearing to release his education records on December 5, 2001. Instead of the "Registration and Records Committee" as designated in the Committee Manual[4], the Student Records Committee ("SRC"), an ad hoc committee, was formed to hear FERPA issues under WAC 504-21-040, (Ct. Rec. 30; App. at 99-109), and prohibited an advisor to directly address the committee or advocate on his behalf. Despite of Sakkarapope's objection to the SRC's authority, the SRC arbitrarily conducted a hearing and rendered its slam-dunk decision of April 5, 2002, stating "the University has fully complied with your request for the release of education records under FERPA." (App. at 53-58)

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[4] The Student Records Committee did not exist prior, but the University delegated its duties to **REGISTRATION AND RECORDS COMMITTEE**, where explicitly stipulated its functions, composition and responsibilities as: (i) **Functions:** (1) Serves in an advisory capacity to the Registrar in matters pertaining to registration and records; (2) Makes recommendations to the Registrar and/or Vice Provost for Student Affairs on policies governing registration and records; (3) Reviews unusual requests for information and for assisting in the interpretation of WAC 504-21, University Policy on Student Education Records; (4) Hears appeals as defined in WAC 504-21-040; and (5) Acts in the capacity of a hearing panel as described in the Family Educational Rights and Privacy Act of 1974 and the Privacy Rights of Parents and Students published by HEW on June 17, 1976; (ii) **Composition and Tenure:** (1) Seven faculty, with three-year terms; (2) One graduate and two undergraduate students, with one-year terms; and (3) Registrar; representatives from the Graduate School; and the Office of the Controller; and (iii) **Responsible to**: The Provost, through the Vice Provost for Student Affairs.

3. On July 19, 2002, the University notified Sakkarapope's right to file a FERPA complaint with the Family Policy Compliance Office ("FPCO") in which he later did on September 27, 2002. (App. at 59-60, 322-335) Because the FPCO did not perform its FERPA duty as prescribed in 34 C.F.R 99.60 et. seq., on December 5, 2003, Sakkarapope then filed a Petition for Adjudication before the Secretary pursuant to 5 USC 554, 555 and 34 CFR 99.60 et seq. to enforce the FERPA federal due process. The Petition was denied on January 20, 2004, stating that:

> ...we are closing this matter without a finding... you do not have a right to an adjudication by the Secretary under the APA and that no further action will be taken by the Department regarding your requested adjudication.....you do not have a right to appeal or otherwise contest this Office's decision with respect to complaints filed under FERPA. (App. at 64-70)

A civil complaint was filed in the district court on February 24, 2004. (App. at 123-132)

The decision of the Secretary of the United States Department of Education (Secretary) raised a federal question sought to be reviewed in this court whether the decision and action regarding FERPA is protected under the federal Administrative Procedure Act. 5 USC 554, 555. To the extent, whether a right to adjudication pursuant to the federal APA exists and such denial violates Sakkarapope's due process right guaranteed by the Fourteenth Amendment.

4. In the related case in the state courts, a Petition for Review of the University's decisions and actions under the state APA, RCW 34.05, was earlier filed separately in the state court, in which among other things the court was initially asked to review a procedural matter of a brief

adjudicative proceeding[5], not a FERPA complaint. Due to the misrepresentation of the petition by the state court and WSU's counsel, Sakkarapope later withdrew those FERPA portions as supplemental jurisdiction to the district court. (App. at 270-271) Despite of his objections, the state court arbitrarily entered a summary judgment order of March 5, 2004, on the FERPA portions anyway. (App. at 36-52)

In the state court proceeding, a federal question sought to be reviewed in this court was raised whether the University's provost has authority to alter the jurisdiction of FERPA complaint to be filed in the state superior court. (App. at 59-62).

To the extent, whether the state superior court has jurisdiction to enter its order of March 5, 2004 regarding FERPA complaint and whether such order is unconstitutional as to FERPA does not confer the jurisdiction to the state court and it violates Sakkarapope's due process right under the Fourteenth Amendment. (App. at 36-52, 224-271)

Further, a federal question sought to be reviewed in this court was raised whether the state trial court order of March 5. 2004[6], is unconstitutional as to the state statute of RCW 34.05 does not authorize the trial court to hear such petition in a summary judgment proceeding and such order violated Sakkarapope's due process right under the Fourteenth Amendment. RCW 34.05.590 (App. at 95);

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[5] WSU adopted a brief adjudicative proceeding under RCW 34.05 to hear FERPA complaint pursuant to WAC 504-04-010; WAC 504-21. (App. at 96-109) The adoption of the procedure creates a confusion of jurisdiction of the courts. The Petition for Review in the state superior court initially was asked the court to review on procedural ground, not a FERPA complaint to be reviewed whether the University has complied with FERPA, which was rested within the FPCO's jurisdiction and the FERPA complaint was already filed with the FPCO in a separate action and jurisdiction.

[6] A petition for review of the state trial court 's order of March 5. 2004, has been pending in the state Supreme Court since February, 2006.

Alpine Lakes Prot. Soc'y v. Dep't of Natural Res., 102 Wn. App.1, 14, 979 P.2d 929 (1999).

4. In the District Court, the Board of Regents of Washington State University (BOR) moved for a partial summary judgment based on the state trial court's order of March 5, 2004. At its own initiative, the district court entered an order prohibiting of filing and an Order to Show Cause on the question of the applicability of the *Rooker-Feldman* doctrine, then granted the BOR's summary judgment without oral argument and resetting a summary judgment hearing date, as well as disposed of all claims. The Secretary did not move for a judgment either through a joint or its own motion for summary judgment or a separate motion for dismissal, but improperly asserted its request in its reply to Motion to Show Cause. (App. at 16-23)

The District Court entered an order of June 22, 2004, granting the BOR's motion for summary judgment that disposes of all parties' claims and determined that:

> Plaintiff's claims against WSU are barred by the doctrines of res judicata and collateral estoppel. Additionally, this court finds that WSU is immune from suit under the Eleventh Amendment to the extent Plaintiff seeks monetary damages. WSU, as an arm of the state or state agency, is also not a "person" for purposes of §1983 and accordingly cannot be sued for damages under §1983. Plaintiff does not have a private right of action to bring a 42 U.S.C. §1983 suit based on violation of FERPA. (Memorandum Opinion; App. at 15)

The District Court's decision raised the important federal questions sought to be reviewed in this court directly involving with the doctrines of res judicata and collateral estoppel, the immunity under the Eleventh Amendment, the due process right under the Fourteenth Amendment, and a

private right under Section 1983 underlying a federal due process right under FERPA §1232g(a)(1); §1232g(f) and (g), in which it is directly involved with the interpretation of the Supreme Court's precedent in *Gonzaga University v. Doe*, 536 U.S. 273, 276 (2002).

To the extent that the District Court granted the BORs' motion summary judgment based on the state trial court order of March 5, 2004, a federal question sought to be reviewed in this court was raised whether the District Court's decision of June 22, 2004, is unconstitutional as it violates Sakkarapope's due process right in the district court proceeding as a backdrop of the constitutionality of the state trial court's order March 5, 2004.

5. The Court of Appeals rendered its decision in an unpublished Memorandum of opinions on February 22, 2006, affirming the district court's summary judgment decision that disposes of all parties claims with prejudice. The opinions of the Court of Appeals raised the federal questions sought to be reviewed in this court as summarized:

(1) Whether the Court of Appeals' decision that "the district court also properly dismissed Sakkarapope's claims against the Secretary of Education because FERPA does not create a private right of action. See *Gonzaga University v. Doe*, 536 U.S. 273, 287 (2002)," conflicts with the decisions of the Court of Appeals for the Second Circuit in *Taylor v. Vermont Dept's of Educ.*, 313 F.3d 768 (2nd Cir. 2002) and the Supreme Court's original opinions in *Gonzaga v. Doe*, 536 U.S. 273 (2002).

(2) Whether the Court of Appeals overlooked that the Congress did not define "the Secretary" as "an educational institution," but imposed administrative duty to enforce FERPA compliance, 20 U.S.C. §1232g(f) and (g) including a **"federal due process right"** under FERPA. The Court of Appeals did not indicate under what authority it adopted to equate "the Secretary" to "an educational institution" under FERPA.

(3) Whether the Court of Appeals overlooked that *Gonzaga* does not govern the instant case since Sakkarapope did not allege "the Secretary" violated either §1232g(a) or §1232g(b), but alleged the Secretary violated and deprived his **"federal due process right"** under §1232g(a)(1) and (g).

Where his **"federal due process rights"** were denied, Sakkarapope lacked any federal review mechanism to recourse from the Secretary's failure to perform official duty. A federal question sought to be reviewed whether this instant case falls within the exception of *Wright v. Roanoke Redevelopment and Housing Authority,* 479 U.S. 418, 426, 432, and *Wilder v. Virginia Hospital Assn.,* 496 U.S. 498, 522-523.

(4) Whether the Court of Appeals overlooked that FERPA creates "**an administrative due process right**" under §1232g(a)(1) and (g). Whether such **"federal due process right"** is guaranteed by the Fourteenth Amendment and then actionable under §1983 is a constitutional question as well as a question of exceptional importance. *Gonzaga v. Doe*, 536 U.S. 273, 122 S.Ct. 2268, 153 L. Ed. 2d. (2002); *State of Maine v. Thiboutot*, 448 U.S. 1 (1980).

(5) Whether Court of Appeals' decision that "[t]he district court properly dismissed Sakkarapope's claims against defendant Board of Regents because the Board is not a "person" within the meaning of 42 U.S.C. §1983," *Thompson v City of Los Angeles*, 885 F. 2d 1439, 1443 (9th Cir. 1989), conflicts with the statute of the State of Washington, RCW 1.16.080(1), and the opinion of the Court of Appeals for the Fifth Circuit in *United Carolina Bank v. Board of Regents of Stephen F. Austin State University,* 665 F.2d 553 (5th Cir. 1982).

(6) Whether the Court of Appeals' decision that "...even if the State of Washington has waived its sovereign immunity to 42 U.S.C. §1983 actions in its own courts, it has not done so in the federal courts," *McConnell v. Critchlow*, 661 F.2d 116, 117 (9th Cir. 1981) violates the equal

protection clause of the Fourteenth Amendment and conflicts with *Regan v. Farmers' Loan & Trust Co.*, 154 U.S. 392 (1894).

To the extent, where FERPA does not authorize the state court to hear any FERPA complaint, a federal question is raised whether the state statue of RCW 4.92.010 required Sakkarapope to suit the BOR only in the state forum is unconstitutional, and then a federal forum under this instant case is permitted.

6. The Court of Appeals entered an order denying Sakkarapope's Petition for Panel Rehearing and Rehearing En Banc June 8, 2006; a final judgment was entered June 27, 2006. (App. at 1-5, 71)

IV. ARGUMENTS

A. FERPA Creates a Federal Right to Inspect and Review" Educational Records And A "Federal Due Process Right"; The Denying Of Such Rights By The Secretary Violates And Deprive The Federal Rights Guaranteed By The Fourteenth Amendment And Falls Within The Exceptional Importance Of "Spending Clause Statute"; The Court Of Appeals' Opinion Applies And Interprets *Gonzaga v. Doe* Beyond The Scope Of The Original Supreme Court's Opinion. [Question #1-6]

The Court of Appeals' decision that "the district court also properly dismissed Sakkarapope's claims against the Secretary of Education because FERPA does not create a private right of action. *See Gonzaga University v. Doe*, 536 U.S. 273, 287 (2002)," conflicts with *Gonzaga v. Doe*, 536 U.S. 273 (2002) and *OWASSO INDE. SCH. DIST. NO. I—011 V. FALVO*, 534 U.S. 426 (2002), 233 F.3d 1203.

The U.S. Supreme Court clearly indicated that it is an open question whether FERPA provides private parties with a cause of action enforceable under §1983:

> At the outset, we note ***it is an open question whether FERPA provides private parties, like respondent, with a cause of action enforceable under §1983.*** We have granted certiorari on this issue in another case. *See Gonzaga Univ. v. Doe,* 534 U.S. __ (2002)..... In these circumstances ***we assume, but without so deciding or expressing an opinion on the question, that private parties may sue an educational agency under §1983 to enforce the provisions of FERPA here at issue. Though we leave open the §1983 question***, the Court has subject-matter jurisdiction because respondent's federal claim is not so "completely devoid of merit as not to involve a federal controversy." *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 89 (1998) (citation omitted).
>
> FERPA also requires recipients of federal funds to provide parents with a hearing at which they may contest the accuracy of their child's education records. §1232g(a)(2). The hearings must be conducted ***"in accordance with regulations of the Secretary,"*** *ibid.*, which in turn require adjudication by a disinterested official and the opportunity for parents to be represented by an attorney. 34 CFR § 99.22 (2001). *OWASSO INDEP. SCH. DIST. NO. I-- 011V. FALVO*, Supra. (Opinion) [Emphasis added]

This open question is also reflected in *Gonzaga v. Doe*, 536 U.S. 273, 122 S. Ct. 2268, 153 L. Ed. 2d. (2002). The Supreme Court's opinion itself on the issue was divided. The majority held that §1232g(b)(1) does not confer federal rights enforceable through a §1983 action. *Gonzaga v. Doe*, 122 S. Ct. 2268, 2271-72 & n.2. The Court did not specifically hold either that §1232g(a) does not create individual rights enforceable by §1983, or that §1232g does not create federal due process right to adjudicate complaints

enforceable by §1983. The dissenting opinion also expresses that most federal court of appeals decided the question have concluded that FERPA creates federal rights enforceable under §1983.

The Second Circuit also expressly acknowledged the limitation of *Gonzaga*, but the court further rationally applying *Gonzaga* beyond the original analysis that:

> Although *Gonzaga*'s discussion does appear to be limited to the §1232g(b) non-disclosure provisions, we need not to determine whether *Gonzaga*'s express holding applies to §1232g in its entirety because, applying the analysis set forth in *Gonzaga*, we conclude that plaintiff does not have the personal right required for a §1983 claim under §1232g(a).....
>
> Again, while the record-access provisions may contain a greater individual focus than the non-disclosure provisions, in that institutions that "effectively prevent" parents from exercising their rights could do so on either an individual or an aggregate level, we do not find in this language an unambiguous expression of congressional intent to confer an individual right enforceable by § 1983.
>
> Accordingly, because we find that *Gonzaga* compels the conclusion that FERPA's records-access provisions, § 1232(g)(a)(1), do not create a personal right enforceable under § 1983,..... *Taylor v. Vermont Dept's of Educ.*, 313 F.3d 768, 785-6(2nd Cir. 2002).

Where the Ninth Circuit has not expressly published its analysis and opinion in this regard, the Secretary deceptively cited a footnote of *Desyllas v. Bernstine*, 351 F.3.d 934, 941 (9th Cir. 2003). Such footnote does not constitute a legal authority or represent this Circuit's decision on this issue, but an informal opinion of the court based on the circumstance of the case before it, not from deciding a case on merit.

The instant case is of alleging: (i) the BOR violated FERPA's records-access provisions, § 1232(g)(a)(1), and (ii) both the BOR and the Secretary violated FERPA's federal due process right, § 1232(g)(a)(1) and (2); 34 C.F.R. § 99.60 et seq. Hence, the Secretary was not a party in either *Taylor* or *Gonzaga*; thus, either case does not apply to the Secretary. The Court of Appeals ignored the fundamental difference between *Taylor* and *Sakkarapope*. *Taylor* was not a student and did not pursue FERPA administrative due process. *Taylor* did not file a complaint with the Secretary. All the cases cited were the cases alleging educational institutions violated FERPA, not the Secretary's failure to enforce FERPA, §1232g(f) and(g), leading to a deprivation of a due process right guaranteed by the Fourteenth Amendment.

The Court of Appeals overlooked that FERPA not only did not define "the Secretary" as "an educational institution," but also imposed administrative duty to enforce FERPA compliance, §1232g(f) and (g). *See also*, *Gonzaga v. Doe*, Id. The Secretary does not have custody of the educational records. There is no way the Secretary would violate FERPA under § 1232(g)(a).

For a statute to create such private rights, its text must be "phased in terms of the persons benefited." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 692, n. 13 (1979). Thus, FERPA does create not only rights for both students and their parents, "the right to inspect and review their education records," under §1232g(a), but also a "federal due process" for enforcing and protecting those rights. 34 C.F.R 99. *See also*, WAC 504-21-030. Whether each right is enforceable by §1983 is a separate legal inquiry, which the later one has not yet been before the courts.

Although FERPA does not expressly indicate that the Secretary's decision is reviewable by a federal court, whether a decision denying Sakkarapope's due process rights under FERPA is governed by the federal Administrative Procedure Act, 5 U.S.C. §551 is a question of exceptional importance.

Where the federal APA does not expressly exclude the Secretary's FERPA administrative decision from the Act, Petitioner respectfully submits that a student has "a right to appeal or otherwise contest the FPCO's decision with respect to complaints filed under FERPA" pursuant to the federal Administrative Procedure Act (APA). Whether such federal right exists is a question of importance to be settled in this court, where the Court of Appeals overlooked such question on merit.

The Secretary has administrative duty, not discretionary function, to enforce FERPA and afford a due process to students. §1232g(f) and(g), §1231c, and§1221e-3. Where the Secretary denied the due process rights under both FERPA and the federal APA, Sakkarapope lacked any federal review mechanism to recourse from the failure to perform official duty. The state and federal officials stripped his FERPA's rights—right to inspect and review, and right to a federal due process. Whether these rights are guaranteed by the Fourteenth Amendment, presumptively enforceable by §1983 and whether this instant case falls within the exception of *Wright* and *Wilder*, where "an aggrieved individual lacked any federal review mechanism," are substantial questions of exceptional importance to be settled by this court to secure uniformity of the court's decisions.

In sum, there are three distinguishable legal inquiries: (i) whether FERPA creates a federal private right, "right to inspect and review," actionable under §1983 against an educational institution, (ii) whether FERPA creates "a federal due process right" actionable under §1983 against an educational institution and/or the Secretary, and (iii) whether "federal due process rights" under § 1232(g)(a)(1) and (2); 34 C.F.R. § 99.60 et seq. are guaranteed by the Fourteenth Amendment. The Court of Appeals did not provide any analysis of its decision in regard to the above important legal inquiries, but simply cited *Gonzaga*, out of the original context of the Supreme Court's opinion.

Where the Congress did not define "the Secretary" as "an educational institution," the application of the authority as if "the Secretary" were "an educational institution," is unconstitutional. Therefore, a legal inquiry of whether the Secretary's failure to enforce FERPA is enforceable is also of the public interest at large, in which it substantially affects a rule of national application.

Therefore, the questions sought to be reviewed in this court as stated herein warrant for the writ. A consideration by this court will have national applications to secure national uniformity of the decisions.

B. The Application of RCW 4.94.010 Violates The Equal Protection Clause Of The Fourteenth Amendment; A Suit In A Federal Court Is The "Only Venue" Given That The State Courts Do Not Have Jurisdiction Over FERPA Claims. [Question # 5-8]

"[B]ecause FERPA prohibits most of the Secretary's functions from being carried out in regional offices, §1232g(g), in order to allay the concern that regionalizing enforcement might lead to multiple interpretations of FERPA, it is implausible to presume that Congress nonetheless intended private suits to be brought before thousands of federal- and state-court judges." *Gonzaga v. Doe*, Id. FERPA complaints are thus not authorized to be litigated in any state court, but under the Secretary.

Administrative decisions and actions of the Secretary are generally governed by the federal Administrative Procedure Act, 5 U.S.C. §551, and subject to judicial review in a federal court. The discretionary function exception does not apply to FERPA compliance since FERPA gives a course of specific conducts for the Secretary and the institution to follow, 34 C.F.R 99. *Berkovitz*, 486 U.S. at 536. Thus, the Secretary's decisions in regard to FERPA including that of

the Board of Regents are under federal court jurisdiction, not state courts.

Given that the state waives its immunity in the state courts and by adopting *McConnell v. Critchlow*, and holding that "it has not done so in the federal courts," the state statute of RCW 4.92.010 is inapplicable because it conflicts with the federal statute, FERPA. RCW 4.92.130. Otherwise, RCW 4.92.010 is unconstitutional as FERPA compliance litigations are not authorized in the state courts and RCW 4.92.010 placing roadblocks in the way of Sakkarapope's claims against the state having been abandoned in which it violates the Equal Protection Clause or Const. art. 1, 12. *HUNTER v. NORTH MASON HIGH SCH. & SCH. DIST.* 403, 85 Wn.2d 810, 539 P.2d 845 (1975) at 818-19.

According to the Provost's decision of November 6, 2002, the University was directing Sakkarapope to challenge its decision in regard to FERPA's procedure in the state superior court. (App. at 61-62) Such direction was without merit as it is subject to non-binding effect. FERPA does not authorize the state court to adjudicate FERPA complaints. Sakkarapope has no obligation to follow such direction. RCW 42.17.250.

Under the specific circumstance in the instant case where FERPA does not allow a complaint to be litigated in any state court and the Secretary's failure to perform its FERPA duty the FPCO, a suit in a federal court is the only venue. Thus, the Court of Appeals' decision of dismissal is practically a roadblock in the way of Sakkarapope's claims against the state having been abandoned in which it violates the Equal Protection Clause which forbids a state from denying any persons within its jurisdiction the equal protection of its laws. The Court of Appeals' decision also cut Sakkarapope's litigation into a piecemeal litigation, one in a state court and another one in a federal court. Such piecemeal litigation is prohibited, where the causes of actions arose from the same or closely related sets of facts and

official actions. The FERPA claims in the instant case should not be adjudicated separately to secure the just and the uniformity of the court's decisions.

The Article II Section 26 of the state constitution explicitly expresses the state consent to suit as a private person or corporation. RCW 4.92.090. Where a state consent to suit in a state forum explicitly expresses, it amounts to consent in the federal forum. For a case as one to enjoin state officers from enforcing a state statue in violation of federal law, it cannot, in any fair sense, be considered a suit against the state. *Regan v. Farmers' Loan & Trust Co.*, 154 U.S. 392 (1894). A suit under FERPA claims against the BOR and/or the Secretary cannot be considered a suit against the state or the United States. The Court of Appeals' decision is in conflict with *Regan,* Id.

Where such administrative remedy and enforcement of FERPA is insufficient, an important inquiry is whether these FERPA rights exist and are guaranteed by the Fourteenth Amendment, presumptively enforceable by §1983. Whether the state statute of RCW 4.92.010 should be declared inapplicable and unconstitutional under the specific condition of the instant case is a question of exceptional importance warranted for the writ.

C. The Board Of Regents of Washington State University Is A "Person" Within The Meaning Of 42 U.S.C. §1983," By RCW 1.16.080(1); The Immunity Is Equitably Waived Where The University Accepts Federal Funds And Has Obligation To Comply With FERPA. [Question #9]

The Court of Appeals' decision conflicts with the statute of the State of Washington, RCW 1.16.080. RCW 1.16.080(1) defines the term "person" that may be construed to include the United States, "this state," or any state or territory, or any public or private corporation or limited liability company, as well as "an individual." This definition

also is consistent with the other related statutes, e.g., RCW 1.16.065, RCW 42.30.020, RCW 42.17.010, 020(3); RCW 42.52.010. Therefore, the State of Washington practically confers the BOR has the same status as an "individual." Thus, the BOR is legally a "person" within the meaning of §1983 by the state consent.

The Court of Appeals' adoption of *Thompson v. City of Los Angeles*, 885 F. 2d 1439, 1443 (9th Cir. 1989), was without considering the specific situation of the instant case inconsistent with the standard set forth by the Fifth Circuit which it carefully noted that "Each situation must be addressed individually because the states have adopted different schemes, both intra and interstate, in constituting their institutions of higher learning." *United Carolina Bank v. Board of Regents of Stephen F. Austin State University*, 665 F.2d 553 (5th Cir. 1982).

The Court of Appeals overlooked that University of California and Washington State University are not under the same, identical state constitution. While Washington State University was created by a state legislature, RCW 28B.30, the University of California was explicitly created as part of the constitution, Article 9 Section 9, and the constitution does not explicitly express consent to be sued. Not all of university functions are entitled to Eleventh Amendment immunity. *Doe v. Lawrence Livermore National Laboratory*, 65 F.3d 771, 775 (1995). Thus, *Thompson* is not applicable as it conflicts with the statues of the State of Washington.

Given that the BOR is an institution as an arm of the state, the court must determine whether the BOR has taken some action that would divest the institution of sovereign immunity, at least for purposes of the lawsuit, e.g, *Florida's Tort Claim Act, Fla. Stat.* 768.28 (1985); *Washington's Actions and Claims Against State Act*, Chapter 4.92 RCW. Sovereign immunity is unavailable in institutions where the state entity is not performing a governmental function, but one that a private entity could perform. *Brown v. Florida*

State Board of Regents, 513 So.2d 184(Fla. Dist. Ct. App. 1987). The FERPA compliance is not discretionary, but administrative.

Not only the state waived its sovereign immunity in the state forum, RCW 4.92.090, but also the state statutes of WSU have consented to comply with federal requirements when receiving federal funds, e.g., RCW 28B.30.210 through 285. Such conditions have divested the Board's immunity as an arm of the state. When performing a function of FERPA compliance, the BOR as its "governing body," has duty to comply with respect to federal due process of law guaranteed by the Fourteenth Amendment. A "special relationship" between the higher education institution and its students gives rise to a duty beyond that owed to invitees or to the general public. *Kleinknecht v. Gettysburg College,* 989 F.2d 1360 (3d Cir. 1993). The BOR and the Secretary owed Sakkarapope a federal due process of law under FERPA, 20 U.S.C. §1232; 34 CFR 99, and are not immune from negligence suits under either sovereign or charitable immunity, liability defends.

The questions whether the Board of Regents of Washington State University is a "person" within the meaning of 42 U.S.C. §1983," by RCW 1.16.080(1), and whether its immunity, if there is, is equitably waived by the related statutes are important and warranted for the writ. Such writ will have national application and uniformity of the court's decisions.

D. Sakkarapope's Due Process Rights Have Been Violated. [Question # 5, 6 and 10]

The Court of Appeals overlooked that the Board of Regents moved for a summary judgment based on a trial court order obtained through an unauthorized proceeding under the state APA, RCW 34.05.590. "The APA does not expressly authorize summary judgments, but case law has established that agencies may employ summary

proceedings." *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App.1, 14, 979 P.2d 929 (1999). WSU does not have a statute to allow a summary judgment. Such judgment entered is void ab initio and is, in legal effect, no judgment at all. *Rust v. WWSC*, 11 Wn. App. 410, 419, 523 P.2d 204 (1974). The state trial court abused of discretion. *State Ex Rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

While the district court recognized a problem of citing the state trial court's decisions of March 5, 2004, at the hearing of May 25, 2004, that:

> Well, that's what somebody from the state attorney general's office wrote and the judge signed...No, I'm just saying it's problematic when a lawyer writes out what the Judge is deciding...That's the difficulty I has, Miss Vance, in trying to discern exactly what testimony the state court entertained and what the state court's decision was.... (Excerpt 281-2),

In addition, in the state Supreme Court had repeatedly held that a memorandum opinion was merely an informal expression of the state trial court's view; it does not constitute either findings of fact or conclusions of law.

Where the objections to the findings of facts were made in the state court and in the district court, the district court still adopted the disputed facts in its decision. The entire district court's application of law was substantially rested on a clearly erroneous finding of a material fact, not supported by the record of evidence, and rested on an inaccurate view of the law. While the Secretary did not move for a summary judgment, the district court entered a judgment on its behalf. Such granting a summary judgment in violation of his due process right constitutes abuse of discretion and substantially causes a complete miscarriage of justice. *United States v. Finley*, 301 F.3d 1000, 1007 (9th Cir.

2002). Therefore, the district court's decision was arbitrary and unconstitutional. The proceeding should be declared a mistrial. The order is unconstitutional.

Howard Grime was the chair of the CGSRR rendered the academic decision where it does not have any expertise in Sakkarapopes' areas of study, and withheld Sakkarapope's educational records where it has duty to comply with the public records disclosure provision and FERPA. Further, when Grimes became dean of the Graduate School, it began a retaliation campaign leading to the termination of Sakkarapope from the joint master degree program in Statistics. Despite of Sakkarapope's appeals, no hearing was afforded.

An academic dismissal is protected under the APA. WSU already conceded that "[a]cademic dismissals are not excluded." from the APA, and that "The University's obligation was to afford Mr. Sakkarapope due process in arriving at a decision. *Horowitz*, 435 U.S. at 79-80." (Ct. Rec. Exh. ...) *Horowitz v. Board of Curators of the Univ. of Missouri,* 538 F.2d 1317 (8th Cir. 1976); *Schuler v. University of Minnesota,* 788 F. 2d. 510 (8th Cir. 1986).

Where WSU adopted rules and procedures, i.e., WAC 504-04-110, WAC 10-08, thus, an academic dismissal is fully protected of a due process under the state law with higher standard requirement than that of the minimal due process requirement under the federal constitution. Sakkarapope is entitled to a due process hearing pursuant to WAC 504-04-110, WAC 10-08. The published procedures were not followed and no hearing was afforded in both dissmissals from the IIDP and a joint master degree program.

A "property interest" in continued attendance and school officials' obligations to afford a minimal due process were recognized that the student should be accorded an opportunity to appear personally to contest such allegation. *Gaspar c. Bruton,* 513 F.2d 843, 850-51 (10th Cir. 1975); Goss v. Lopez, 419 U.S. at 584, 95 S.Ct. at 741 [519 F 2d at

9]; *Board of Regents v. Roth*, 408 U.S. at 573, 92 S. Ct. at 2707. Thus, a "hearing" is required to be held before the final order becomes effective. *Shirley Bowing v. Board of Trustee of Green River Com. College*, 85 Wn.2d 300(1975); *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d 832 (1969).

The dismissal from the M.S. program was NOT on academic grounds, but a dispute of a program completion deadline. (CR[7] 669). Grimes is not authorized to make academic decision of dropping a student. (Graduate School Policies and Procedures (GSPP) at 17; CR 550) Sakkarapope, in fact, received a satisfactory annual evaluation result of making normal progress toward the degree completion. (CR 13-4, 669) Such dispute is a question of fact and law, not involved with scholastic standards, readily for a full due process of law. *Brookins v. Bonnell*, 362 F. Supp. 379, 383 (E.D. Pa. 1973). Indeed, the facts show arbitrary, capricious, and premeditatedly retaliation actions by Grimes, official misconducts. RCW 9A.80.010.

A court has subject matter jurisdiction to decide whether the official procedures used in assigning a student a particular grade were arbitrary and capricious. *OCHSNER v. BOARD OF TRUSTEES*, 61 Wn. App. 772, 773, 811 P. 2d 985 (1991) Under the Graduate Student Code, Sakkarapope has rights and expectations while WSU has duty to maintain them, (CP[8] 261-271), to publish rules and procedures, RCW 42.17.250, to notify administrative remedies available, and to fulfill faculty responsibilities. The fact shows that Kenneth Duft not only breached a contract of the agreed content and format of the IIDP exam (CP 74-8) and refused to convene the exam committee to solve the dispute in the result of the written exam, but also rushed into the oral exam and concluded the proceeding. The IIDP exam was never been reviewed by any independent committee having expertise in the academic areas of study.

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[7] CR refers to WSU's certified records filed in the state courts.

[8] Clerk's papers in the state court docket.

To date, Sakkarapope has not yet seen the entire exams. Hence, the IIDP exam decision was arbitrary and capricious; and the procedural flaws arisen from WSU's failures to perform its duties constitute justifiable reliance and invited error. WSU is then barred from inserting its own negligence and misconduct to justify the dismissals. In the presence of clearly shown constitutional flaws in the "administrative process," i.e., *Cuddy v. Department of Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617(1968), the dismissals from both programs violated and deprived Sakkarapope's due process right and liberty interest. WSU breached an educational contract.

Grimes' conducts are not only directly involved with the violation of FERPA federal due process right, but also substantially affected Sakkarapope's due process right under the state APA in regard to the dismissals as well as Sakkarapope's due process right and immigration status and federal right under the INA. Such affirmative official misconducts have substantial backdrops in both state and federal courts, in which it cannot be excluded in this instant case.

A hearing is the critical component of Sakkarapope's due process. Grimes' actions violate and deprive Sakkarapope's due process right guaranteed by the Fourteenth Amendment. Such violation was ignored by the state trial court, the district court and the Court of Appeals.

Where such violation of due process rights has spread across state and federal frontier, a federal question whether Sakkarapope's due process rights have been violated and deprived under the Fourteenth Amendment is significant and whether the constitutionality of the lower court decisions are unconstitutional are warranted for the writ. A clarification of what protection the Constitution actually affords a student from official misconduct is nationally significant. A consideration by this court will secure the just, judicial

standard and the uniformity of the lower court's decisions as well as maintain public faith the judicial system.

E. The Doctrines of Res Judicata and Collateral Estoppel Do Not Apply to the Instant Case. [Question # 11]

The Petition for Review on the portion of Paragraph 3B was brought before the state trial court to interpret a procedural matter of brief adjudicative proceedings under the APA (RCW 34.05); it was not a complaint of FERPA violation. Because of the defendant's counsel misconduct making misrepresentation of the petition, Sakkarapope filed a motion before the U.S. District Court to take supplemental jurisdiction and notified the state trial court on March 4, 2004, to remove the controversial subject matter off the petition. Consequently, the state trial court's decision on the portion of paragraph 3B of the Petition for Review became legally moot and unconstitutional. The state trial court lacks of jurisdiction over the subject matter as to Mr. Sakkarapope's action of removal the controversial issue off the petition for review. Here, Plaintiff preserved the subject matter; the res judicata doctrine is not applicable in this case.

Like the doctrine of res judicata which bars relitigation of a claim once it has been decided, the doctrine of collateral estoppel, or issue preclusion, prevents relitigation of an issue after the party against whom the doctrine is applied has had a full and fair opportunity to litigate his or her case. *Hanson v. City of Snohomish*, 121 Wn.2d 552, 561, 852 P.2d 295 (1993); *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983). *The RESTATEMENT (SECOND) OF JUDGMENTS* § 27 (1982) states the general rule as follows:

> When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the

> determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

Under this doctrine, a subsequent action is barred when it is identical with a previous action in four respects: (1) same subject matter; (2) same cause of action; (3) same persons and parties; and (4) same quality of the persons for or against whom the claim is made. *Norco Constr., Inc. v. King County*, 106 Wn.2d 290, 293, 721 P.2d 511 (1986); *HAYES v. CITY OF SEATTLE*, 131 Wn.2d 706, 934 P.2d 1179 (1997).

Before the doctrine of collateral estoppel may be applied, the party asserting the doctrine must prove: (1) the issue decided in the prior adjudication is identical with the one presented in the second action; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) application of the doctrine does not work an injustice. *Reninger*, 134 Wn.2d at 449; *Hanson*, 121 Wn.2d at 562; *McDaniels*, 108 Wn.2d at 303; *Chau v. City of Seattle*, 60 Wn. App. 115, 119, 802 P.2d 822 (1991); *NIELSON v. PANAWAY GEN. MED. CLINIC*, 135 Wn.2d 255, 263 (1998). However, the District Court misrepresented the facts and the natures of the case. It is clear that the parties in both cases are not exactly identical. The so-call Board of Regents was used in different legal representations. The issues in both cases are not identical, but closely related because it arose from the same officials who had acted in various roles.

In determining whether application of the doctrine of collateral estoppel would work an injustice, the court focuses on whether the parties to the earlier adjudication were afforded a full and fair opportunity to litigate their claim in a neutral forum. *Rains*, 100 Wn.2d at 666; *Neff v. Allstate Ins. Co.*, 70 Wn. App. 796, 801, 855 P.2d 1223 (1993); *NIELSON*

v. SPANAWAY GEN. MED. CLINIC, 135 Wn.2d 255, 265 (1998). In *Marquardt*, the Court of Appeals held that "collateral estoppel should not be applied to judgments of dismissal, even when based on settlement agreements, since the parties could settle for myriad reasons not related to the resolution of the issues they are litigating." *Marquardt v. Federal Old Line Ins. Co.*, 33 Wn. App. 685, 658 P.2d 20, 689 (1983).

Given that the trial court order at issue were constitutional and effectively final, the collateral estoppel is not applicable here because the state superior court declined to review of Sakkarapope's arguments. Where the state superior court dismissed the case due to untimely submission and/or the issues were not actually litigated, Sakkarapope was NOT afforded a full and fair opportunity to litigate in the state court. It cannot be said it is fair to apply such doctrine preventing the claims in the federal court. Therefore, the collateral estoppel is not applicable in this case.

In addition, "Res judicata does not bar claims which arise out of a transaction separate and apart from the issue previously litigated." *Schoeman v. New York Life Ins. Co.*, 106 Wn.2d 855, 860, 726 P.2d 1 (1986) (citing *Seattle-First Nat'l Bank v. Kawachi,* 91 Wn.2d 223, 226, 588 P.2d 725 (1978)). Given that the state trial court at issue is effectively considered a final judgment, Sakkarapope is also not barred from the federal court because: (i) Sakkarapope's claim in this court is not a subsequent action of the petition for review under the state APA, but the Complaint is a subsequent action of the Secretary's final decision of January 20, 2004; and (ii) the constitutional prohibition against double jeopardy includes within it the right of the defendant, who is not the state, to plead "collateral estoppel." 397 U.S. 436.

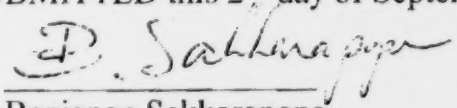
V. CONCLUSION

Petitioner respectively asks this court to grant a writ and reverse the Court of Appeals' decision. A consideration

by this court will settle all important issues sought to be reviewed and secure a uniformity of national application. Any student, American or international, should be explicitly informed of what protection they would be guaranteed under the Constitution of the United States.

It is further requested that this court grant relieves as indicated in the original Complaint and the briefs filed in the Court of Appeals including reasonable costs and expenses. If there is such a proceeding on remand to the district court, it is requested that the entire case is transferred to the Western District of Washington for further proceedings.

RESPECTFULLY SUBMITTED this 2nd day of September, 2006.



Benjapon Sakkarapope
Appearing Pro Se Petitioner

No.

IN THE

Supreme Court of the United States

BENJAPON SAKKARAPOPE,
Petitioner

V.

THE BOARD OF REGENTS OF
WASHINGTON STATE UNIVERSITY,
AND
THE SECRETARY OF
THE UNITED STATES DEPARTMENT OF EDUCATION,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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Office of the Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939

June 27, 2006

USDC, Spokane
Eastern District of Washington (Spokane)
O.O. Box 1493
Spokane, WA 99210

No.	Title	Agency/D.C. No.
04-35643	Sakkarapope v. Board of Regents WA	CV-04-00074-JLQ

Dear Clerk:

The following document in the above listed cause is being sent to you under cover of this letter.

Certified copy of the Decree of the Court

The record on appeal will follow under separate cover. Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,
Cathy A. Catterson
Clerk of Court
s/ Gabriela Van Allen
Deputy Clerk

Enclosure(s)
cc: All Counsel

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Plaintiff-Appellant, v. BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY; et al., Defendants-Appellees.	No. 04-35643 D.C. No. CV-04-00074-JLQ **JUDGMENT**

Appeal from the United States District Court FOR THE Eastern District of Washington (Spokane).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of Washington (Spokane) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is
AFFIRMED.

Filed and entered 02/22/06

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 30 2006
JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE. WASHINGTON

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Plaintiff-Appellant, v. BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY; ET AL., Defendants-Appellees.	No. 04-35643 D.C. No. CV-04-00074-JLQ **JUDGMENT**

Appeal from the United States District Court FOR THE Eastern District of Washington (Spokane).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of Washington (Spokane) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is
AFFIRMED.

Filed and entered 02/22/06

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
JUN 27 2006
s/ Gabriela Van Allen
By Deputy Clerk

FILED
FEB 22 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Plaintiff-Appellant, v. BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY; ET AL., Defendants-Appellees.	No. 04-35643 D.C. No. CV-04-00074-JLQ **MEMORANDUM***

Appeal from the United States District Court
For the Eastern District of Washington
Justin L. Quackenbush, District Judge, Presiding

Submitted February 13, 2006**

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Benjapon Sakkarapope appeals pro se from the district court's judgment dismissing his 42 U.S.C. §1983 action alleging violation of the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g. We have jurisdiction under 28 U.S.C. 1291. After de novo review, *Thompson v. City of Los Angeles,* 885 F.2d 1439, 1442 (9th Cir. 1989), we affirm.

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court properly dismissed Sakkarapope's claims against defendant Board of Regents because the Board is not a "person" within the meaning of 42 U.S.C. §1983. *See id.* at 1443. Moreover, even if the State of Washington has waived its sovereign immunity to 42 U.S.C. §1983 actions in its own courts, it has not done so in the federal courts. *See McConnell v. Critchlow,* 661 F.2d 116, 117 (9th Cir. 1981).

The district also properly dismissed Sakkarapope's claims against the Secretary of Education because FERPA does not create a private right of action. *See Gonzaga University v. Doe,* 536 U.S. 273, 287 (2002).

Sakkarapope's remaining contentions are unpersuasive.

Sakkarapope's pending motions are denied.

Appellee's motion to strike is granted.

AFFIRMED

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 22 2004
JAMES R. LARSEN, CLERK
_____DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WSU, et al., Defendants.	JUDGMENT IN A CIVIL CASE CASE NUMBER: CV-04-00074-JLQ

Decision by Court. This action came to hearing the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED Washington State University's motion for Summary Judgment is GRANTED. Plaintiff's Complaint and the claims therein are DISMISSED WITH PREJUDICE.

June 22, 2004
Date

JAMES R. LARSEN
Clerk
s/ Renea Ferrante
(By) Deputy Clerk

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 22 2004
JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATE DEPARTMENT OF EDUCATION, Defendants.	No. CV-04-00074-JLQ **MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT AND DIRECTING JUDGMENT OF DISMISSAL**

BEFORE THE COURT is Defendant WSU's Motion for Summary Judgment (Ct. Rec. 16) and the issues raised in this court's prior Order to Show Cause (Ct. Rec. 21) and the subsequent briefing of the parties (Ct. Rec. 36, 38, 44). A teleconference was held regarding the Order to Show on May 25, 2004. The Motion for Summary Judgment was taken under submission without oral argument on June 7, 2004. Plaintiff, **Benjapon Sakkarapope**, is proceeding *pro se* in this matter. Defendant, the Board of Regents of Washington State University ("WSU") is represented by Assistant Attorney General **Holly Vance**. Defendant, the Secretary of Education, is represented by Assistant United States Attorney **Rolf H. Tangvald.**

BACKGROUND

Plaintiff is a national of Thailand and former WSU student. Plaintiff was a candidate for a Ph.D program in Agricultural Economics and a Masters degree student in Statistics. Plaintiff failed the preliminary qualifying exam for the Ph.D. program in January of 2000, and was notified in April of 2000 that he would be dropped from the program. While appealing his dismissal from the Ph.D. program through the administrative process at WSU, Plaintiff continued to be enrolled as a Masters degree students in Statistics. Plaintiff failed to complete the requirements for the Master degree program in a timely manner and was disenrolled in February 2003.

Plaintiff has contested his dismissal over the last four years by sending numerous letters to WSU and involving the Washington Attorney General's Office in his public records request. He also has allegedly filed a petition with the Secretary of the U.S. Department of Education to enforce compliance under the Family Education Rights and Privacy Act ("FERPA"). The petition was denied. Plaintiff also filed a petition for review of WSU's actions in the Superior Court of Whitman County on July 23, 2003. (Ct. Rec. 6). A hearing for summary judgment was held in that case on February 6, 2004. On February 17, 2004, the Superior Court entered a "Memorandum Decision On Motion For Summary Judgment". (Ct. Rec. 19, Deft. Ex. B). The memorandum decision stated that summary judgment "will be granted" as to WSU's decision to dismiss Plaintiff from the Ph.D. and Masters programs. (Id). It also stated that the portion of the petition seeking review of WSU's actions under FERPA was untimely and "will be dismissed". (Id). The decision then directed WSU to prepare and order in accordance with the court's decision.

Apparently while WSU was preparing this order, Plaintiff decided to file a lawsuit in federal court on February 24, 2004. (Ct. Rec. 1). Plaintiff now brings a 42 U.S.C. §1983 action alleging violation of his federal right under

FERPA and that disenrollment from the Masters in statistics program at WSU violated his due process rights. (Ct. Rec. 1). Plaintiff then filed a "Motion for Supplemental Jurisdiction" on March 4, 2004, in which he represented that "the state court has not yet entered any ruling in the case" (Ct. Rec. 5), and apparently sought this court to stay the state court proceeding and "take" the case from the state court. A final decision was entered by the Superior Court of Whitman County on March 5, 2004. (Ct. Rec. 19, Deft. Ex. C). The final decision dismissed Plaintiff's FERPA claim for lack of subject matter jurisdiction and found that WSU's decision to dismiss Plaintiff from the Masters in statistics program on academic grounds was not arbitrary and capricious and that Plaintiff was afforded 'all process due". (Id). Plaintiff filed a notice of appeal to the state of Washington Court of Appeals on March 5, 2004. (Ct. Rec. 19, Deft. Ex. D).

I. Rooker-Feldman

This court issued an Order to Show Cause believing that allocation of the *Rooker-Feldman* doctrine may result in an absence of subject matter jurisdiction and dismissal of Plaintiff's action. After reviewing the parties briefing, holding a hearing and consulting recent Ninth Circuit caselaw, the court finds that the *Rooker-Feldman* doctrine does not preclude subject-matter jurisdiction in this case.

The *Rooker-Feldman* doctrine, so named for the cases of *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 464 (1983), prohibits a losing plaintiff in state court from bring a suit in federal court asserting as legal wrongs the allegedly erroneous legal rulings of the state court and seeking to set aside the judgment of the court. Such a suit is a "forbidden de facto appeal". *Noel v. Hall*, 341 F.3d 1148, 1156 (9th Cir. 2003). Although it could reasonably be argued that Plaintiff's federal suit is a de facto appeals of his adverse state court ruling, recent Ninth Circuit decisions dictate that a district court use caution when determining whether the doctrine applies. The *Noel* court observed it is

"commonplace" for district courts to complain that the "doctrine is difficult to apply". 341 F.3d at 1162. The *Noel* court then stated, "where the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, *Rooker-Feldman* does not bar jurisdiction. " *Id.* at 1163.

More recently in *Maldonado v. Harris*, ____F.3d____ (9th Cir. June 4, 2004), the Ninth Circuit, relying on *Noel*, reversed the district court's determination that the doctrine applied and cautioned that although a suit not barred by *Rooker-Feldman* may nonetheless be claimed-precluded, claim preclusion and *Rooker-Feldman* are distinct inquiries. *Id.* at ___. The Maldonado court noted that even though plaintiff's complaint sought relief from the injunction entered by the state court, *Rooker-Feldman* did not apply. The court stated that in order for *Rooker-Feldman* to apply, "a plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for relief." *Id.* at ___. These recent Ninth Circuit cases leave the definite impression that the doctrine is to be applied to dismiss an action only sparingly. Although Sakkarapope may now raise the same claims he made in the state court, he does not specifically seek to vacate the state court judgment nor does he specifically allege a legal error by the state court as the basis for his relief in federal court. Therefore, the *Rooker-Feldman* doctrine does not apply.

II. Eleventh Amendment Immunity

In its summary judgment motion, Defendant WSU argues that it is an "arm of the state" entitled to immunity from suit under the Eleventh Amendment. Additionally as an "arm of the state" WSU argues that the Washington State University Board of Regents is not a "person" within the meaning of 42 U.S.C. §1983, and is therefore not subject to liability. The court finds merit with both arguments.

The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against

one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign States." U.S. Const. amend XI, and represents, "a real limitation on a federal court's federal-question jurisdiction," *Idaho v. Coeur d'Alene Tribe,* 521 U.S. 261, 270(1997). Generally a state created and funded university is considered an instrumentality, or arm, of the state and is entitled to Eleventh Amendment immunity. See *Rounds v. Oregon State Bd. Of Higher Education.*, 166 F.3d 1032 (9th Cir. 1999)(finding University of Oregon was "arm of the State" entitled to immunity); *Goodisman v. Lytle*, 724 F.2d 818 (9th Cir. 1984)(University of Washington is an arm of the state).

WSU is similarly created, funded, and controlled by the State and is therefore considered an arm of the state and entitled to immunity under the Eleventh Amendment to the same extent as the University of Washington. See *Spaulding v. University of Wash.,* 740 F.2d 686, 692 (9th Cir. 1984)(overruled on other grounds); *Hontz v. State*, 105 Wash. 2d 302 (1986)(University of Washington is state agency). Additionally, the state and its agencies are not persons subject to suit under 42 U.S.C. §1983. *Will v. Michigan Dept. of State Police,* 491 U.S. 58, 65 (1989); *Thompson v. City of Los Angeles,* 885 F.2d 1439, 1443 (9th Cir. 1989)(dismissal of civil rights lawsuit was warranted against University of California Board of Regents because is not a "person" within the meaning of §1983).

III. Collateral Estoppel/Res Judicata

WSU also contends that the doctrine of res judicata prohibits Plaintiff from bringing claims that were raised, or could have been raised, in the prior adjudication. WSU contends that Plaintiff's FERPA and Due Process claims are both precluded under the res judicata doctrine by reason of the prior state court action. Alternatively, WSU contends that the doctrine of collateral estoppel applies to the issue of the alleged wrongful dismissal from the Masters statistics program.

When the former judgment is a state court judgment, as is the case here, this court must apply the res judicata and collateral estoppel rules of the state that rendered the underlying judgment. *Migra v. Warren City School Dist. Bd. Of Ed.*, 465 U.S. 75 (1984). Federal courts must give the same preclusive effect to a state court judgment as another court of that state would give. See 28 U.S.C. §1738; *Palomer Mobilehome Park Ass'n v. City of San Marcos,* 989 F.2d 362, 364 (9th Cir. 1993). Under Washington law, res judicata bars relitigation of claims that were or should have been decided among the parties in an earlier proceeding. See *Loveridge v. Fred Meyer, Inc.*, 887 P.2d 898, 900 (Wash. 1995) Res judicata occurs when a prior judgment has a concurrence of identity in four respects with a subsequent action. There must be identity of: 1) subject matter; 2) cause of action; 3) persons and parties; and 4) the quality of the persons for or against whom the claim is made. *Rains v. State,* 100 Wash. 2d 660, 665 (1983). Collateral estoppel applies if: 1) the issues decided in the prior adjudication is identical with the one presented in the current action; 2) there was a final judgment on the merits; 3) the party against whom the plea is asserted was a party or in privity to the prior adjudication; and 4) the application of the doctrine will not work an injustice on the party against whom the doctrine is to be applied. *Id.* at 664.

WSU and Mr. Sakkarapope were both parties to the prior state court action. Mr. Sakkarapope alleged then, as he does now in federal court, that WSU wrongfully dismissed him from the Masters in statistics program without Due Process and raised the issues of his FERPA request for release of education records in his Petition for Review. Mr. Sakkarapope later represented to the state court that he was not seeking review of WSU's FERPA compliance and the state court ordered that Plaintiff's claims "arguably seeking review of WSU's decisions relating to the accuracy and completeness of his educational records under FERPA will be dismissed." (Feb 17, 2004 Memorandum Decision, Ct.

Rec. 19, Ex. B). The state court entered a final judgment, which Plaintiff appealed. The res judicata and collateral estoppel doctrines apply to state trial court judgments even if an appeal is pending. *City of Des Moines v. $81,231,* 943 P.2d 669, 674-76 (Wash. App. 1997)("a judgment becomes final for res judicata purposes at the beginning, not the end of the appellate process" and "Similarly, with collateral estoppel, a party is precluded from relitigating issues previously determined while an appeal as to those issues is pending."). The same rule applies in federal court. *Tripati v. G.L.Henman,* 857 F.2d 1366, 1367 (9th Cir. 1988)("To deny preclusion in these circumstances would lead to an absurd result: Litigants would be able to refile identical cases while appeals are pending, enmeshing their opponents and the court system in tangles of duplicative litigation.").

Application of the res judicata doctrine to this matter is appropriate to prevent Sakkarapope from enmeshing the Defendants and this court in the tangles of duplicative litigation. Additionally, Plaintiff is collaterally estopped from bringing a §1983 action against WSU alleging his constitutional right to Due Process was violated when he was dismissed from the Masters in statistics program. Both WSU and Mr. Sakkarapope were parties to the state court action and the identical issues were raised by Sakkarapope against WSU. The state court entered a final judgment deciding the issue and application of the collateral estoppel doctrine will not work an injustice, therefore all four elements for the application of collateral estoppel are met. Plaintiff had a full and fair opportunity to argue his claim in state court, with the court stating it had "spent considerable time reviewing the lengthy casefile" and that Plaintiff's pleadings were "unreasonably lengthy, confusing, and difficult to follow". This court concurs that Plaintiff has a tendency to submit overlength pleadings and voluminous exhibits. The Plaintiff's §1983 claim arising from his dismissal from the Masters and Doctoral programs are barred by the adverse decision of the Washington state superior court.

IV. FERPA Claim against Secretary of Education

With the disenrollment from the graduate program claims against WSU dismissed on the basis of res judicata/collateral estoppel, or alternatively on Eleventh Amendment immunity, the only remaining claim is the FERPA claim against the Secretary of Education. The Secretary contends that Plaintiff does not have a private right of action to bring a 42 U.S.C. §1983 suit based in violation of FERPA. This contention is correct. The United States Supreme Court has clearly held that the provisions of FERPA create no personal rights to enforce under 42 U.S.C. §1983. *Gonzaga University v. Doe*, 536 U.S. 273, 276 (2002). Plaintiff contends that the statutory subsection at issues in *Gonzaga*, §1232g(b), is not the same as the subsection he asserts his claim under, §1232g(a), and therefore *Gonzaga* is not controlling. However, this court does not read *Gonzaga* so narrowly, nor do subsequent Circuit decisions support Plaintiff's argument. See *Desyllas v. Bernstine*, 351 F.3d 934, 941 n.2 (9th Cir. 2003)("The statutory scheme[20 U.S.C. §1232g(b)(1)] does not create a private right of action for a student to sue under 42 U.S.C. §1983."); *Taylor v. Vermont Department of Education*, 313 F.3d 768, 786 (2nd Cir. 2002)("we find that *Gonzaga* compels the conclusion that FERPA's record-access provisions, §1232f(a)(1), do not create a personal right enforceable under §1983"); *Missouri Child Care Ass'n v. Cross*, 294 F.3d 1034, 1040 (9th Cir. 2002)(reading *Gonzaga* to hold that FERPA does not create any private right to enforcement); *United States v. Miami Univ.*, 294 F.3d. 797, 809 (6th Cir. 2002)(reading *Gonzaga* to hold FERPA does not creates that an individual may enforce through §1983).

Plaintiff may not assert a §1983 against the Secretary, or anyone else for that matter, based on the alleged violation of FERPA provisions.

CONCLUSION

Although application of the *Rooker-Feldman* doctrine is arguably appropriate in this matter, the court has

determined that it does have subject matter jurisdiction. The court has made a separate inquiry and determined that Plaintiff's claims against WSU are barred by the doctrines of res judicata and collateral estoppel. Additionally, this court finds that WSU is immune from suit under the Eleventh Amendment to the extent Plaintiff seeks monetary damages. WSU, as an arm of the state or state agency, is also not a "person" for purposes of §1983 and accordingly cannot be sued for damages under §1983. Plaintiff does not have a private right of action to bring a 42 U.S.C. §1983 suit based on violation of FERPA.

Accordingly, and for all the foregoing reasons,

IT IS HEREBY ORDERED:

1. WSU's Motion for Summary Judgment is **GRANTED**. (Ct. Rec. 16).

2. Plaintiff's Complaint and the claims therein are **dismissed with prejudice.** (Ct. Rec. 1)

IT IS SO ORDERED. The Clerk is hereby directed to file this Order, enter Judgment in favor of Defendants dismissing the Complaint and claims therein with prejudice, furnish copies to Plaintiff and counsel, and close this file.

DATED this 21st day of June, 2004.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
APR 12 2004
JAMES R. LARSEN, CLERK
_____DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATE DEPARTMENT OF EDUCATION, Defendants.	No. CV-04-00074-JLQ **ORDER TO SHOW CAUSE RE: DISMISSAL**

Plaintiff, **Benjapon Sakkarapope**, is proceeding *pro se* in this matter. Defendant, the Board of Regents of Washington State University ("WSU") is represented by Assistant Attorney General **Holly Vance**.

Plaintiff is a national of Thailand and former WSU student. Plaintiff was a candidate for a Ph.D program in Agricultural Economics and a Masters degree student in Statistics. Plaintiff failed the preliminary qualifying exam for the Ph.D. program in January of 2000, and was notified in April of 2000 that he would be dropped from the program. While appealing his dismissal from the Ph.D. program through the administrative process at WSU, Plaintiff continued to be enrolled as a Masters degree students in Statistics. Plaintiff failed to complete the requirements for the

Master degree program in a timely manner and was disenrolled in February 2003.

Plaintiff has contested his dismissal over the last four years by sending numerous letters to WSU and involving the Washington Attorney General's Office in his public records request. He also has allegedly filed a petition with the Secretary of the U.S. Department of Education to enforce compliance under the Family Education Rights and Privacy Act ("FERPA"). The petition was denied. Plaintiff also filed a petition for review of WSU's actions in the Superior Court of Whitman County on July 23, 2003. (Ct. Rec. 6). A hearing for summary judgment was held in that case on February 6, 2004. On February 17, 2004, the Superior Court entered a "Memorandum Decision On Motion For Summary Judgment". (Ct. Rec. 19, Deft. Ex. B). The memorandum decision stated that summary judgment "will be granted" as to WSU's decision to dismiss Plaintiff from the Ph.D. and Masters programs. (Id). It also stated that the portion of the petition seeking review of WSU's actions under FERPA was untimely and "will be dismissed". (Id). The decision then directed WSU to prepare and order in accordance with the court's decision.

Apparently while WSU was preparing this order, Plaintiff decided to file a lawsuit in federal court on February 24, 2004. (Ct. Rec. 1). Plaintiff now brings a 42 U.S.C. §1983 action alleging violation of his federal right under FERPA and that disenrollment from the Masters in statistics program at WSU-violated his due process rights. (Ct. Rec. 1). Plaintiff then filed a "Motion for Supplemental Jurisdiction" on march 4, 2004, in which he represented that "the state court has not yet entered any ruling in the case" (Ct. Rec. 5), and apparently sought this court to stay the state court proceeding and "take" the case from the state court. A final decision was entered by the Superior Court of Whitman County on March 5, 2004. (Ct. Rec. 19, Deft. Ex. C). Plaintiff filed a notice of appeal to the state of Washington

Court of Appeals on March 5, 2004. (Ct. Rec. 19, Deft. Ex. D).

It is well-established that "[a]s courts of original jurisdiction, federal district courts have no authority to review the final determinations of a state court in judicial proceedings. This is true even when the challenge to a state court decision involves federal constitutional issues." *Branson v. Nott,* 62 F.3d 287 (9th Cir. 1995). Plaintiffs petition for review in state court sought review of the "decisions and actions of the Board of Regents, Washington State University" including review of his dismissal from the Ph.D. and Masters program and review of his student record requests under state and federal law.

The *Rooker-Feldman* doctrine, so named for the cases of *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 464 (1983), prohibits a losing plaintiff in state court from bring a suit in federal court asserting as legal wrongs the allegedly erroneous legal rulings of the state court and seeking to set aside the judgment of the court. Such a federal suit is a "forbidden de facto appeal". *Noel v. Hall,* 341 F.3d 1148, 1156 (9th Cir. 2003). If a suit in federal court is a forbidden de facto appeal, in part, but also raises other claims, the court must apply the "inextricably intertwined" test and refuse to decide any issue raised in the federal suit that is "inextricably intertwined" with an issue resolved by the state court in its judicial decision. *Id.* at 1158.

It appears to this court that Plaintiff's federal §1983 suit is an impermissible collateral attach on the state court judgment, or a forbidden de facto appeal. To the extent Plaintiff's complaint alleges that his disenrollment from WSU constituted a Constitutional violation of his due process rights, such claim is inextricably intertwined with issues resolved by the state court in its decision. Accordingly,

IT IS HEREBY ORDERED:

1. Rooker-Felman is a jurisdictional doctrine. *See Worldwide Church of God v. McNair,* 805 F.2d 888 (9th Cir.

1986). Plaintiff is therefore directed to show cause why this Complaint should not be dismissed for lack of subject matter jurisdiction.

2. Plaintiff shall file on or before **May 3, 2004** a memorandum of authorities demonstrating why the present cause should not be dismissed.

3. If Plaintiff does not file the memorandum on or before May 3, 2004, the court shall enter judgment dismissing the claim with prejudice.

4. If Plaintiff does file the memorandum, Defendant WSU shall file a responsive memorandum on or before **May 17, 2004.** Plaintiff shall not file a reply memorandum. The issues raised in this order and the parties memoranda, if filed, will be heard via teleconference on May 25, 2004 at 3:00p.m. along with Defendant WSU's previously noted and pending summary judgment motion.

IT IS SO ORDERED. The Clerk is hereby directed to this Order, and furnish copies to Plaintiff and counsel.

DATED this 9th day of April, 2004.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
MAY 26 2004
JAMES R. LARSEN, CLERK
_____DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATE DEPARTMENT OF EDUCATION, Defendants.	No. CV-04-00074-JLQ **ORDER RE: SUMMARY JUDGMENT MOTION AND PROHIBITION OF FILINGS**

BEFORE THE COURT are the issues raised in this court's prior Order to Show Cause (Ct. Rec. 21) and the parties subsequent responsive briefing (Ct. Rec. 36, 38, 44). A teleconference was held on these matters on May 25, 2004. Plaintiff, **Benjapon Sakkarapope**, is proceeding *pro se* in this matter. Defendant, the Board of Regents of Washington State University ("WSU") is represented by Assistant Attorney General **Holly Vance**. Defendant, the Secretary of Education, is represented by Assistant United States Attorney **Rolf H. Tangvald,** however Frank Wilson appeared on behalf of the Secretary at the hearing.

IT IS HEREBY ORDERED:

1. At this time, Plaintiff has shown cause for this action to proceed. Plaintiff raises at least one issue in this federal action that was not decided by the Washington state

court and therefore application of the *Rooker-Feldman* doctrine does not divest this court of subject matter jurisdiction over the entirety of Plaintiff's claims. This court will reserve its ruling as to whether application of the *Rooker-Feldman* doctrine divests the court of jurisdiction over any of Plaintiff's claims.

2. Defendant WSU has previously sought and been granted an extension of time to file a reply brief in regard to the pending summary judgment motion. (Ct. Rec. 39). Defendant WSU shall file a reply brief, if any, **on or before June 7, 2004.**

3. With the exception of the aforementioned reply brief of WSU, **there shall be no further filings on behalf of any of the parties** until this court issues and Order granting, or denying, the summary judgment motion.

4. As of June 7, 2004, the summary judgment matter shall be deemed submitted and will be considered by the court **without** oral argument.

5. Upon determination of the summary judgment motion, future case scheduling dates will be set of necessary.

IT IS SO ORDERED. The Clerk is hereby directed to this Order, and furnish copies to Plaintiff and counsel.

DATED this 25th day of May, 2004.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 02 2004
JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATE DEPARTMENT OF EDUCATION, Defendants.	No. CV-04-00074-JLQ **ORDER RE: PLAINTIFF'S MOTION FOR CLARIFICATION**

BEFORE THE COURT is Plaintiff's Motion for Clarification (Ct. Rec. 48) of this court's previous Order (Ct. Rec. 47). Plaintiff, **Benjapon Sakkarapope**, is proceeding *pro se* in this matter. Defendant, the Board of Regents of Washington State University ("WSU") is represented by Assistant Attorney General **Holly Vance**. Defendant, the Secretary of Education, is represented by Assistant United States Attorney **Rolf H. Tangvald**.

Plaintiff apparently finds some lack of clarity in the court's previous statement that, "**there shall be no further filings on behalf of any of the parties** until this court issues and Order granting, or denying, the summary judgment motion." (Ct. Rec. 47). The meaning of this statement is entirely clear. However, Plaintiff wishes to file an amended statement of

facts, Plaintiff also wishes to file his own summary judgment motion and supporting memorandum.

IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Clarification (Ct. Rec. 48) is **DENIED** to extent it is really a motion for modification of the court's prior order. Plaintiff's request to amend his responsive statement of facts is **DENIED.**

2. Plaintiff's request to file his own summary judgment motion, in contradiction of this court's prior order, is DENIED. If Defendant's pending summary judgment motion is denied, Plaintiff will not be prejudiced by waiting until that time to file his summary judgment motion.

3. **THERE SHALL BE NO FURTHER FILINGS ON BEHALF OF ANY THE PARTIES** until this court issues and Order granting, or denying, the summary judgment motion, with the previously stated exception (Ct. Rec. 47) hat WSU may file a reply brief in regard to the pending summary judgment motion.

4. As of June 7, 2004, the summary judgment matter shall be deemed submitted and will be considered by the court **without** oral argument.

5. Upon determination of the summary judgment motion, future case scheduling dates will be set of necessary.

IT IS SO ORDERED. The Clerk is hereby directed to this Order, and furnish copies to Plaintiff and counsel.

DATED this 1st day of June, 2004.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 28 2004
JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATE DEPARTMENT OF EDUCATION, Defendants.	No. CV-04-00074-JLQ **ORDER RE: PLAINTIFF'S MOTION FOR SANCTIONS**

BEFORE THE COURT is Plaintiff's Motion for Sanctions pursuant to Fed. R. Civ. P. 11(b)(Ct. Rec. 54). Plaintiff, **Benjapon Sakkarapope**, is proceeding *pro se* in this matter. Defendant, the Board of Regents of Washington State University ("WSU") is represented by Assistant Attorney General **Holly Vance**. Defendant, the Secretary of Education, is represented by Assistant United States Attorney **Rolf H. Tangvald.**

This court previously granted summary judgment in favor of Defendants and entered Judgment on June 22, 2004. (Ct. Rec. 52, 53). Plaintiff filed a motion for sanctions on June 25, 2004. The court has reviewed the motion and finds the arguments therein devoid of merit. Sanctions are not warranted.

IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Sanctions (Ct. Rec. 54) is **DENIED**.

IT IS SO ORDERED. The Clerk is hereby directed to this Order, and furnish copies to Plaintiff and counsel.

DATED this 28th day of June, 2004.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondent.	NO. 03-2-00168-4 SUBPOENA DUCES TECUM

The State of Washington to:

THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY
Address: 139 French Administration Building, Room 422, Stadium Way, Pullman, WA 99164

You are commanded to transmit the following documents to the Court:

1. The records and related documents of the adjudication of rights and responsibilities conducted by the CGSRR (Drs. Howard Grimes, Sally Blank and James Harsh):

(a) The original documents of which Mr. Benjapon Sakkarapope submitted to each member of the CGSRR on September 1, 2000 (three sets of the documents; one for each member of the CGSRR).

(b) ALL other handwritten notes made by all individual members of the CGSRR at the meeting dated September 1, 2000, where the handwritten notes were not made on the original documents of which Mr. Benjapon Sakkarapope submitted to each member of the CGSRR on September 1, 2000.

(c) All records and related documents of any interviews, investigation, reviews, deliberation and/or

meetings conducted by Drs. Howard Grimes, Sally Blank, and/or James Harsh in the capacity of the CGSRR as to form the decision of September 19, 2000.

2. All records of communications (verbal, written or email or other forms of actions) between Dr. Richard Shumway and faculty members who have custody of the requested records, and Public Records Officer responsive to the Mr. Sakkarapope's record requests of July 6 and November 12, 2002.

3. All records and related documents of the 1997 doctoral qualifying examination (May-June) and the 1998 doctoral quantitative methods qualifying examination (May-June), Agricultural Economics Department. For the 1997 examination, the records include both Economic Theory and Quantitative Methods qualifying examinations. The records include, but not limit to, the following:

(a) Exam questions and answer keys.

(b) Individual students' written answers with evaluative comments and grades for each question. The records include all individual students who took the exams and all evaluative comments/grades by all panel evaluators as well as all Exam Performance of individual students. Any personal identification of the other students may be removed.

(c) Academic criteria, rules and procedure of determining an overall passing or failing grade.

(d) Records of the examination committee's meetings and decisions in regard to the doctoral qualifying examinations.

4. All records and related documents of evidence, opinions and recommendations obtained and/or used by Dr. Richard Shumway as the basis of his decision of August 10, 1998. The records also include all communications between Dr. Shumway and faculty members in regard to the appeal of July 22,1998.

5. All records and related documents of evidence, opinions and recommendations obtained and/or used by Dr. Paul Barkley (Interim Chair) in regard to his decision of Mr. Sakkarapope's admission to the doctoral program of the department during June-August 1997.
6. All records and related documents of the 2000 IIDP preliminary written examination—questions (January 12 and 14, 2000), student answers with evaluative comments, answer keys, evaluation criteria, and other relevant documents, administered by Drs. Kenneth Duft and Li-Ming Han, including Harry Turtle.
7. All records and related documents of the February 11, 2000, IIDP preliminary oral examination--questions, student answers with evaluative comments, answer keys, evaluation criteria, and other relevant documents, administered by the examination committee chaired by Dr. Kenneth Duft.
8. All records, observation handwritten notes and related documents of the February 11, 2000, IIDP preliminary oral examination created and administered by Dr. Alan Black in the capacity of the Graduate School's Representative.
9. As indicated in Dr. Kenneth Duft's letter (no date) responsive to Dr. Herbert Hill's email dated 5/5/2000, the records and related documents:

(a) As indicated in the answer to Question #1, "personal copies of the text books and related materials from which all my questions were extracted."

(b) As indicated in the answer to Question# 3, "several portions of the written qualifying examinations."

10. All records and related documents of any interviews, investigation, reviews, deliberation and/or meetings conducted by the Student Records Committee and/or its members in the brief adjudicative proceeding of March 27, 2002.

11. The record as indicated in the attachment of the Dr. Howard Grimes' memorandum of January 10, 2003, to the Provost that "HDG See Sheet 2."
The records and/or related documents above do not include any portions of which were already filed with the Court on September 22, 2003.
You are commanded to file the records and related documents above by 3:00PM on January 2, 2004.

DATED this 8th of December, 2003.

s/Brenda G. Clonings
By Deputy Clerk
Whitman County Superior Court Clerk

Person Requesting subpoena:
Name: Mr. Benjapon Sakkarapope, Petitioner
Address: 430 NE Oak #2, Pullman, WA 99163
Telephone Number: 509-332-8911

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondent.	NO. 03-2-00168-4 SUBPOENA DUCES TECUM

The State of Washington to:
THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY
Address: 139 French Administration Building, Room 422, Stadium Way, Pullman, WA 99164

You are commanded to transmit the following documents to the Court:

1. Records of a report from the WSU Police Department in regard to the allegation with a Disruption and Violation of Federal Law as indicated in Assistant Dean of Students Joan E. Menzies of January 26, 1995. The records shall include, but not limit to, the following:
    a. Written statements or transcript of verbal statements of the allegations made by Mr. Greg Black and other faculty/staff members of the Department of Marketing;
    b. Any documentation prepared or witnessed by Doug Robinsons, a court appointed attorney, on January 12, 1995; and
    c. A report of apartment search by WSU Police Department on January 12, 1995.
2. Records of a review of the allegation with a Disruption and Violation of Federal Law as referred to in Assistant

Dean of Students Joan E. Menzies of February 14, 1995. The records shall include, but not limit to, any records of mediation by Mr. Oliver Bangera, the President of the GPSA at that time.

3. Records of the matters in regard to Mr. Benjapon Sakkarapope while he was a graduate student in the Department of Marketing (1993-1995). The records shall include, but not limit to, the following:
    a. Documentation of any communication/transaction between Mr. Sakkarapope and Dr. James McCullough and Dr. Patriya Tansuhaj as well as other faculty and staff members;
    b. Documentation of Mr. Sakkarapope's appeals filed with the department and of reviews of the appeal matters by the Department and Associate Dean Ernie Stromsdorfer, the College of Business and Economics;
    c. Documentation of communications among Drs. James McCullough, Patriya Tansuhaj, Darrel Muehling, and Ms. Kathleen M. Bodley (Associcate Director of the International Program at that time) as well as other faculty members in regard to Mr. Sakkarapope's funding at WSU in 1994. The records shall include, but not limit to, any documentation responsive to Mr. Sakkrapope's request dated June 6, 1994, addressed to Ms. Bodley; and
    d. Mr. Sakkarapope's annual evaluations made by the Department of Marketing.
4. Records of reviews of Mr. Benjapon Sakkarapope's appeals before the University Ombudsman, Mary Gallwey, dated September 29, 1994, and subsequent appeals through this office. The records shall include, but not limit to, all correspondences and materials created, obtained and reviewed by the Ombudsman.

    Note: The original of appeal documents submitted by Mr. Sakkarapope was returned to him, in which were

not included any other materials created, obtained and used by the Ombudsman when it was returned.

5. Records an admission arrangement to the graduate program in marketing for Mr. Benjapon Sakkarapope in 1992. The records shall include, but not limit to, the following:
    a. Any written communications among Dean Thawee Dhanatrakul and Associate Dean for Academic Affairs Benjapon Sakkarapope, Dr. James McCullough and Dr. Patriya Tansuhaj as well as other WSU faculty and staffs members in regard to an admission arrangement for Mr. Sakkarapope; and
    b. An meeting minute of a student exchange program between WSU and Prince of Songkla University (PSU), Thailand. The meeting was held on May 28, 1992, at the PSU. Dr. Patriya Tanshuhaj was the WSU's representative at the meeting. The record may be either in Thai or English version made by Dr. Tansuhaj or other staffs; and
    c. Any other memorandum of understanding between WSU and PSU made in 1992, which is related to Mr. Sakkarapope's admission to a graduate program in marketing at WSU.
6. Records of the disputed matters between the Department of Marketing and Ms. Somdee Hongphisanvivat. The records shall include, but not limit to, a police report on the incident in Summer-Fall 1993.
7. Mr. Sakkarapope's medical records at WSU's Health and Wellness Services. The records shall include, but not limit to, the records of emergency unit.
8. Mr. Sakkarapope's records of counseling service at WSU's Hotline Crisis.
9. A copy of a manuscript titled, "Advertising's Effect on Brand-Switching Behavior: The Role of Top-of-Mind Brand Awareness," authored by Benjapon Sakkarapope

and Eric R. Spangenberg from Dr. Eric R. Spangenberg's annual or tenure review file in 1993-4.

The records and/or related documents above do not include any portions of which were already filed with the Court. You are commanded to serve upon the Petitioner and file the records and related documents above by 3:00PM on January 21, 2004. The Court encourages you to serve the Petitioner earlier to allow a pro se more time to prepare his responses to the Motion for Summary Judgment for the hearing on February 6, 2004.

DATED this 12th of January, 2004.

s/Brenda G. Clonings
By Deputy Clerk
Whitman County Superior Court Clerk

Person Requesting subpoena:
Name: Mr. Benjapon Sakkarapope, Petitioner
Address: 430 NE Oak #2, Pullman, WA 99163
Telephone Number: 509-332-8911

FILED
JAN 16 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 03-2-00168-4 **ORDER ON OBJECTIONS TO SUBPOENA DUCES TECUM AND MOTION TO QUASH**

This matter came before the Court on Washington State Universities motion for an order quashing the subpoena issued December 8, 2003 (Subpoena), sealing the examinations transmitted January 2, 2004 until further order of the Court.

The Court heard the oral argument of the counsel for Washington State University and Petitioner Benjapon Sakkarapope, considered the pleadings filed in this action and thecontent of the Supoena, the Declaration of Richard Shumway, the Declaration of Kirsten Pauli, the Declaration of Counsel, the documents and records filed January 2, 2004 and the pages of the Certified Record cited in the Declarations and pleadings.

The Court FINDS that:

(1) The Subpoena improperly reduced the time for respondeing to discovery from 30 to 25 days;

(2) The Subpoena is discovery related solely to Petitioner's claims regarding the Public Records Act and called for items that WSU has not released to Petitioner on his public request

for the documents dated July 6, 2003 based in part on statutory exemptions in the Public Records Act.
(3) The Subpoena required WSU to produce and file with the Court examinations and answer keys as well as information on all individuals students who took preliminary doctoral program examinations taken by the Petitioner in the Agricultural and Resource Economics program, including the students' written answers, with evaluative comments ad grades for each answer. The Subpoena did not require that the students' names be included, however, very few students took the examination and those students may be easiiy identifiable based on the information released.
Based on the above findings it is ORDERED:
(1) Respondent's motion is granted;
(2) The Subpoena issued December 8, 2003 *and the Subpoena issued January 12, 2004 are quashed*[*].
(3) The examinations transmitted January 2, 2004 will remain sealed until further order of the Court;
(4) Respondent need not provide to the Petitioner or file with the Court records on individual students other than Mr. Sakkarapope, examinations or answer keys until further order of the Court.
DATED this 16th day of January, 2004.

s/ David Frazier
JUDGE

[*] The italic text is originally in hand-written.

FILED
MAR 5 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 03-2-00168-4 **ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came before the Honorable David Frazier, Judge of the Whitman County Superior Court, on Respondents' motion for Summary Judgment. The matter was heard February 6, 2004. The Petitioner, Benjapon Sakkarapope, appeared pro se. Respondents State of Washington, the Board of Regents, and Washington State University were represented by Sheryl L. Gordon, Assistant Attorney General. The Court reviewed the pleadings, heard oral arguments from both parties, and considered the following documents and evidence:

1. Petition for Review and attachments;
2. Respondents' Motion for Summary Judgment and Memorandum in Support of Respondents' Motion for Summary Judgment;
3. Declaration of Counsel in Support of Motion for Summary Judgment and attachments;
4. Declarations of Richard Beckes, Robert C. Bates, Karen M. Fisher, Mary Furnari, Howard Grimes, and Kristen Pauli certifying the records;

5. The Certified Records transmitted to the Court on September 22, 2003;
6. Discovery submitted; and
7. Responsive pleadings of Petitioner filed February 5, 2004 (stricken as per memorandum opinion).

FINDINGS OF FACT

Based on the above-listed pleadings, arguments, documents and evidence, the Court makes and enters the following Findings of Fact.

1. In July of 1999, Mr. Sakkarapope began trying to obtain a Master of Science in Statistics (M.S.) degree at Washington State University (WSU or University).

2. WSU Graduate School policy requires all students to complete master's degrees within six years of the *earliest credits* used to satisfy the degree requirements.

3. Mr. Sakkarapope obtained the Graduate School's permission to count the credits he earned at WSU in 1994 toward his M.S. degree. Allowing the 1994 credits gave Mr. Sakkarapope until the end of the spring semester to complete his M.S. degree.

4. Mr. Sakkarapope was aware of the need to complete the M.S. degree on time and he used that requirement to apply for financial aid for the spring 2001 semester, stating in his application that "This Spring 2001 semester is my last semester to complete a master[sic] degree in statistics."

5. Mr. Sakkarapope did not complete his M.S. degree by the end of the spring 2001 semester. The department in which he was studying extended the deadline to August 2002.

6. The Dean of the Graduate School gave Mr. Sakkarapope permission to enroll for less than full-time (under-enroll) for one semester, fall 2000.

7. Mr. Sakkarapope was not given permission to under-enroll for any other semester.

8. Mr. Sakkarapope did not enroll enough credits to be full-time for several semesters, including fall 2002.

9. In fall 2002, Dr. Howard Grimes, Dean of the Graduate School, became aware that Mr. Sakkarapope was under-enrolled and had not completed his M.S. degree on time.
10. Dr. Grimes had the authority to decide whether Mr. Sakkarapope was allowed an extension of time complete his M.S. degree requirements.
11. Mr. Sakkarapope's advisor asked Dr. Grimes for additional extension of time for Mr. Sakkarapope to complete his M.S. degree requirements. Dr. Grimes determined that Mr. Sakkarapope was not making adequate progress toward his M.S. degree and was under-enrolled, and thus was in violation of Graduate School policy.
12. On December 18, 2002, Dr. Grimes granted the request for extension and set a new deadline for completion of *January 27, 2003*. The new deadline set by Dr. Grimes was reasonable. In setting the deadline, Dr. Grimes considered Mr. Sakkarapope's statement that he had been in Thailand on family business for part of the fall semester and the amount of work Mr. Sakkarapope must do to successfully complete the M.S. program.
13. Mr. Sakkarapope had the opportunity to complete the work necessary for the M.S. degree and graduate.
14. Dr. Grimes informed Mr. Sakkarapope of his academic deficiencies. Mr. Sakkarapope had an opportunity to respond to Dr. Grimes regarding his academic deficiencies. Mr. Sakkarapope was timely informed of the deadline and requirements to correct those deficiencies and complete his M.S. program.
15. Dr. Grimes granted and set reasonable conditions and requirements for the extension and communicated those to Mr. Sakkarapope. Dr. Grimes required that by January 27, 2003, Mr. Sakkarapope was to complete his M.S. program (a short paper), apply for graduation in the M.S. program, and schedule his project defense. Mr. Sakkarapope only needed to successfully complete these tasks to be eligible to graduate and receive the M.S. degree.

16. Mr. Sakkarapope refused to do any of the remaining tasks for completion of his M.S. degree. He wrote letters to Dr. Grimes indicating he would not comply with the deadline, and stating that he did not think Dr. Grimes had the authority to set a deadline. However, Dr. Grimes, acting in his capacity as Dean of the Graduate School, had the authority to make this decision and did so according to Graduate School policies and procedures.

17. On January 28, 2003, Mr. Sakkarapope had not accomplished any of the remaining tasks to earn his M.S. degree. Dr. Grimes then directed the Graduate School and Registrar to dismiss Mr. Sakkarapope from the M.S. program. He was not enrolled in any other program at WSU, and on January 31, 2003, WSU terminated his enrollment at the University.

18. WSU's dismissal of Mr. Sakkarapope from his M.S. program was an academic dismissal.

19. Dr. Grimes used his academic expertise and experience to make a determination in accordance with WSU policy that Mr. Sakkarapope was unlikely to successfully complete the M.S. program. Dr. Grimes made his decisions honestly, in good faith, and with due consideration of the facts and circumstances regarding Mr. Sakkarapope.

20. Mr. Sakkarapope presented no admissible evidence demonstrating a genuine issue of material fact concerning whether WSU breached his educational contract or whether WSU deprived him of due process of law when it dismissed him from the M.S. program.

21. WSU did not breach its educational contract with Mr. Sakkarapope by dismissing him from the M.S. program when he refused to complete the program after having been given an opportunity to do so.

22. On March 24, 1999, the Graduate School approved Mr. Sakkarapope's petition to attempt to obtain an Individual Interdisciplinary Doctoral Degree. This particular doctoral program is housed in the Graduate School.

23. The doctoral program required a candidate to take and pass a preliminary examination. On February 11, 2000, Mr. Sakkarapope had completed and failed both the written and oral portions of the preliminary examination.

24. Mr. Sakkarapope protested the outcome of the examination and requested the Graduate School review it. The Graduate School Dean, Dr. Karen DePauw, had the matter investigated and reviewed by the faculty and a faculty committee. Based on that investigation and information, she decided to affirm Mr. Sakkarapope's failure and dismissed him from the doctoral program.

25. Mr. Sakkarapope requested the decision be reviewed by then Interim Provost Dr. Ronald Hopkins, as provided in the Graduate School's policies and procedures. Dr. Hopkins reviewed the matter and issued a final decision letter based on his review. That decision letter was provided to Mr. Sakkarapope on February 1, 2001 by mailing it to Mr. Sakkarapope at his proper address. It is undisputed that Mr. Sakkarapope timely received that letter. The letter specifically advised. Mr. Sakkarapope that this decision represented the University's final decision.

26. Mr. Sakkarapope did not present admissible evidence or authority that he did not have to file a Superior Court appeal of a final agency decision within 30 days after he received the decision.

27. Mr. Sakkarapope filed the Petition for Review in Whitman County Superior Court of WSU's action dismissing him from his doctoral program more than 30 days after he received the final agency decision mailed February 1, 2001. Mr. Sakkarapope's appeal was filed more than 30 days after he received the University's written rejections of his efforts to have the decisions reviewed by others, including the Board of Regents.

28. On March 14, 2002, at Mr. Sakkarapope's request, the Unviersity scheduled a Student Records Committee (SRC) to review the completeness and accuracy of his educational record that had been provided for his review under the

Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. pt. 99 (FERPA). The SRC held a Brief Adjudicative Proceeding on March 27, 2002, and reviewed M. Sakakrapope's records pursuant to WAC 504-21-040.

29. On April 5, 2002, the SRC issued an initial order in the matter and mailed that order to Mr. Sakkarapope at his proper address. It is undisputed that Mr. Sakkarapope timely received that letter. In that order, the SRC determined that Mr. Sakkarapope had been provided his entire educational record, except for some of his records from a Department of Agricultural and Resources Economics file. The SRC appended those records to its order. The decision letter stated that "with the inclusions in his letter, the University has fully complied with your request for the release of [your] educational records under FERPA." The decision also contained an express statement that Mr. Sakakrapope could come in and review his records. It also clearly informed him that under WAC 504-21-080, he had the right to submit a written view of the records to the Provost.

30. On September 23, 2002, Mr. Sakkarapope asked for review of the decision by the current Provost, Dr. Robert Bates. Dr. Bates reviewed the records and the initial order, and issued a final decision letter that was mailed to Mr. Sakkarapope at his proper address on November 6, 2002. It was undisputed that Mr. Sakkrapope timely received that letter. The November 6, 2002, final decision letter affirmed that SRC's initial decision and clearly informed Mr. Sakkarapope that he could review his education record at the Graduate School and the Department of Agriculture and Resources Economics. The letter also contained an express notice that this was the University's final decision, and a notice of Mr. Sakkarapope's right to appeal WSU's final decision to the Superior Court within 30 days in accordance with RCW 34.05.514 and .542.

31. Mr. Sakkarapope's Petition for Review of that decision was filed with the Whitman County Superior Court on July

23, 2003, more than 30 days after the received the decision letter.

32. Mr. Sakkarapope, wishing to initiate a public records dispute, included in public records dispute in his Petition for Review of the agency's actions, requesting relief under the Administrative Procedures Act, RCW 34.05.

33. Mr. WSU is prejudiced by the public records dispute before the Court as an administrative appeal because an appeal of an agency action is based on the record, and WSU is unable to present new evidence, including witness of affidavits in defense of its actions and responses to Mr. Sakkarapope's public records requests.

CONCLUSION OF LAW

Based on the findings above, the Court makes and entered the following Conclusions of Law:

1. No genuine issue of material fact exists in this action and WSU is entitled to a judgment as a matter of law.

2. The Court can review only final agency actions or orders under the Administrative Appeals Act. The only final agency actions or decisions set forth in the Petition for Review are the appeal of Mr. Sakkarapope's dismissal from his doctoral program, the appeal of Mr. Sakkarapope's dismissal from his M.S. program, and the order entered November 6, 2002 by the agency regarding the accuracy and completeness of the educational records provided to Mr. Sakkarapope.

3. This Court lack subject matter jurisdiction over the appeal of the November 6, 2002, final decision following a Brief Adjudicative Proceeding held March 27, 2002, to determine the accuracy and completeness of the educational records as provided to his pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. pt. 99 (FERPA), and WAC 504-21-040. Mr. Sakkarapope filed his judicial appeal beyond the statute of limitations set forth in RCW 34.05.

4. This Court lacks subject matter jurisdiction over the February 1, 2001, final agency action dismissing Mr. Sakkarapope on academic grounds from his doctoral

program. Mr. Sakkarapope filed his judicial appeal of that agency action beyond the statute of limitation set forth in RCW 34.05.

5. WSU's decision dismissing Mr. Sakkarapope from his M.S. program on academic grounds was not arbitrary and capricious.

6. WSU afforded Mr. Sakkarapope all process due before dismissing him on academic grounds from his M.S. program.

7. Mr. Sakkarapope did not meet his burden of demonstrating the invalidity of WSU's actions dismissing him from the M.S. program. WSU's academic dismissal of Mr. Sakkarapope from the M.S. program should be affirmed.

8. Mr. Sakkarapope's dispute regarding WSU's responses to his public records requests should be filed pursuant to RCW 42.17.340(1). It is therefore not properly before this Court and should be dismissed without prejudice.

ORDER

IT IS ORDERED that:

1. Respondents' Motion for Summary Judgment is granted;
2. The Petitioner's appeal of his dismissal from his Individual Interdisciplinary Doctoral Degree program on February 1, 2001, is dismissed for lack of subject matter jurisdiction.
3. The Petitioner's appeal of the order of November 6, 2002, determining that his educational record as provided to him under FERPA was accurate and complete is dismissed for lack of subject matter jurisdiction;
4. The Respondent's action of January 28, 2003, dismissing Mr. Sakkarapope from his Master of Science in Statistics program on academic grounds is affirmed; and
5. The Petitioner's causes of action against WSU regarding the Public Records Act are dismissed without prejudice as they are not properly before the Court.
6. *This is a final decision on the issues that were raised in the Summary Judgment hearing. This court will hear no further motions or applications from either party on these issues. Any objection, dispute or disagreement with this*

order must be addressed to the appellate court(s), not this trial court[*].

DATED this 5th of March, 2004

s/ David Frazier
Honorable David Frazier

[*] The item #6 of the order was originally in hand-written by the trial court as additional to the proposed order after Sakkarapope's objections to the proposed findings of facts and conclusion of law were heard at the presentment hearing of March 5, 2004.

FILED
FEB 17 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 03-2-00168-4 **MEMORANDUM DECISION ON MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came before the court on February 6, 2004 for a hearing on respondents' motion for summary judgment. Respondents (hereafter referred to as "WSU") appeared through Sheryl L. Gordon, Assistant Attorney General: petitioner (hereafter referred to as "Sakkarapope") appeared pro se. At the conclusion of Argument, the court took its decision under advisement for further review and consideration. Based on that review, the court hereby enters the following decision.

Procedural Background

The following procedural background is relevant to the present motion for summary judgment:

1. On July 23, 2003, Sakkarapope filed a Petition for Review seeking review of numerous actions, proceedings, and decisions made by officials at WSU concerning Sakkarapope and his status as a graduate student at the university. The petition also sought review of WSU's responses to several public records requests made by Sakkarapope, together with an award of monetary

compensation for personal injuries and damages to Sakkarapope's reputation.

2. Sakkarapope's Petition for Review specifically alleges that it is brought pursuant to RCW 34.05.510 et. seq. and RCW 42.17.340. The petition consists of 19 pages, together with 10 separate attachments consisting of a total of approximately 150 pages. The various attachments itemize and challenge the legality of numerous proceedings, decisions and actions taken by WSU. Attachment I to the petition, for instance, makes reference to 35 actions or decisions made by WSU officials, Attachment II relates to 7 decisions and actions of the WSU Student Records Committee, Attachment III pertains to 16 public records requests made by Sakkarapope, and Attachment IV lists WSU's denials of his public record requests.

3. As illustrated in Attachment V and VI to the Petition for Review, which are essentially timelines Sakkarapope prepared of activities and decisions involved in his appeal, almost all alleged action took place before June 15, 2003.

4. The casefile in this action presently consists of 17 separate court files that fill one large filing cabinet drawer in the office of the Whitman County Clerk. Most of these contain what WSU purports to be the certified record of underlying agency proceedings, although a large portion of the file pertains to discovery requests propounded by Sakkarapope and WSUs' responses thereto. This discovery relates to Sakkarapope's position that the certified record filed by WSU in this action is not accurate and complete, and involves his attempts to amend and supplement this record.

5. WSU's motion for summary judgment alleges that Sakkarapope's Petition for Review only addresses three final actions by WSU that would be subject to appeal under the Washington Administrative Procedure Act. RCW Chapter 34.05. According to WSU, these three final decisions were the following:

a. WSU's decision to dismiss Sakkarapope on academic grounds from the Individual Interdisciplinary Degree Doctoral Program (IIDP), citing page 2 of the Petition for Review, line 7-14.

b. WSU's decision to dismiss Sakkarapope on academic grounds from his Masters of Sciences in Statistics program, citing page 3 of the Petition for Review, lines 1-3.

c. WSU's decision that Sakkarapope's academic records is accurate pursuant to Family Educational Right and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99 (FERPA), and WAC 504-21-040, citing page 2 of the Petition for Review, lines 7-14.

6. In its summary judgment motion, WSU asks this court to dismiss the IIDP and FERPA challenges as untimely because Sakkarapope failed to file his appeal of those decisions within the statute of limitations or, in the alterantive, to affirm WSU's decision dismissing Sakkarapope from his IIDP and his Master of Science in Statistics programs on merits and as a matter of law. In addition, WSU seeks dismissal of Sakkarapope's appeal if WSU's responses to his public records requests on the grounds that such review is beyond the scope and authority of the Superior Court in the context of an administrative appeal under RCW Chapter 34.05.

7. Sakkarapope did not file his response to WSUs' summary judgment motion until February 5, 2004, the day immediately before the scheduled summary judgment hearing. That response is entitled Memorandum In Support of Petitioner's Defense. On February 6, 2004, he filed a document entitled Index of Certified Records.

8. In his response to WSU's summary judgment motion, Sakkarapope claims that his Petition for Review was timely filed, as he attempted to exhaust his administrative remedies by cumulatively appealing decisions that were made to various organizational levels at WSU, culminating in an eventual attempt in January of 2003 to have his concerns

heard at a meeting of the WSU Board of Regents. When the Board of Regents refused to consider his case, Sakkarapope filed a petition with the Governor in May of 2003. He also asserts, among other things, that he is not appealing or seeking this court's review of whether WSU fully complied with his request for the release of education records under FERPA, that the certified record filed by WSU in this matter is not complete, and that he has separately and properly joined his public records request issue under RCW 42.17.340 with his APA appeal of WSU's administrative decisions and actions.

Discussion

The court has spent considerable time reviewing the lengthy casefile in this matter, and in reviewing the pleading relating to the present motion. In all candor, the court finds Sakkarapope's original Petition for Review, his Memorandum in Support of Petitioner's Defense, and many of his other pleadings poorly written, unreasonably lengthy, confusing, and difficult to follow and understand. As stated earlier, the memorandum in Support of Petitioner's Defense, which is Sakkarapope's primary response to WSU's motion for summary judgment, was filed on day before the summary judgment motion was scheduled for hearing. As such, it is untimely under CR 56(c), and must therefore be stricken by the court in its consideration of the issues presented. Specifically, CR56(c) requires the party opposing summary judgment to file and serve responsive pleadings and other documentation "not later than 11 calendar days before the hearing." As a litigant appearing pro se, Sakkarapope is not entitled to special treatment, but is bound by the same rules of procedure and substantive law that apply to a litigant that is represented by counsel. *State v. Fritz*, 21 Wash. App. 354 (1978); *Bonney Lake v. Delany*, 22 Wash. App. 193 (1978); *Bly v. Henry*, 28 Wn. App. 469 (1980). Even if Sakkarapope's response were not stricken, however, the court's review of that document discloses that it presents little evidence, if any, that would raise a genuine issue of fact

material to the issues presented, and no valid legal authority that would support a denial of WSU's motion for summary judgment.

RCW 34.05.542(2) provides that a Petition for Review of an agency order must be file with the court within thirty days after service of the final order. Similarly, a Petition for Review of an agency action must be filed within thirty days after the agency action. RCW 34.05.542(3). These time requirements are jurisdictional—if the time limits are not met, the court lacks subject matter jurisdiction to hear the appeal, and the petition must be dismissed. *Tarabochia v. Town of Gig Harbor*, 28 Wn.App. 119 (1981).

Despite Sakkarapope's arguments to the contrary, WSU's final decision to terminate him from the IIDP was made and communicated to Sakkarapope on February 1, 2001. On that date, WSU Provost, Dr. Ronald Hopkins, sent Sakkarapope a letter affirming Dean DePauw's decision to dismiss Sakkarapope from the doctorate program (CR 273). The letter specifically advised Sakkarapope that this decision represented the Univeristy's final decision. Under RCW 34.05.542, therefore, Sakkarapope had thirty days from February 1, 2001 to file his Petition for Review with the Superior Court. His failure to file such a petition from approximately 28 months after this date deprives the court of jurisdiction to review WSU's decision. The fact that Sakkarapope disagreed with the provost and felt he was entitled to repeated reconsideration and review within various levels of WSU's organizational structure, including the Board of Regents, is without merit. Sakkarapope has presented no valid legal authority to support a right to such further review, or to consideration by the Governor's Office, and even if such right were found to exist, Sakkarapope's appeal is still untimely. In every instance where Sakkarapope sought further administrative review of his termination from the IIDP, WSU's written rejections of these efforts was received well over 30 days from the date of the Petition for Review was filed.

Despite statements in the Petition for Review to he contrary, Sakkarapope now asserts that he is not seeking judicial review of WSU's decisions relative to his educational records under FERPA. Even if he had south such review, the record undisputedly establishes that WSU's final decision on the accuracy and completeness of Sakkarapope's educational records was issued on November 6, 2002 (CR 620-21), and that the Petition for Review was not filed for some eight month thereafter. Like the IIDP appeal, such lengthy delay in seeking judicial review of this decision deprives the court of jurisdiction to hear and determine this case. The court will enter an order pursuant to both Sakkarapope's request and to WSU's motion for summary judgment, dismissing the FERPA questions as an issue for this court's review.

In his Petition for Review, Sakkarapope not only sought review of administrative decisions made by WSU under 34.05.510 et. seq., but he claimed that WSU violated the Open Public Records Act, and he sought relief for this violation pursuant to RCW 42.17.340. As WSU argues, however, an appeal under the APA is a review on the record, whereas an Open Public Records Act dispute is an original action initiated by an order to show cause. An Open Public Records Act Challenge is based not just on the agency record, but also upon the presentation of new evidence. RCW 34.05.558; RCW 42.17.340(1). Sakkarapope's issues pertaining to his public records requests are therefore not properly before the court, and are subject to summary dismissal without prejudice.

WSU additionally requests summary judgment affirming its decision dismissing Sakkarapope from his Master of Science in Statistics program. In support of this request, WSU refers the court to the administrative record that it filed and certified in this case. WSU argues that this record supports a finding that Sakkarapope refused to complete his Masters Degree after given a reasonable opportunity to do so, and that it was this refusal that led to his

dismissal from the Masters program. Once the moving party sustains the initial burden in a summary judgment proceeding of coming forward with evidence that the case involves no genuine issue of material fact, the burden then shifts to the nonmoving party to show that a genuine issue of material fact does exist. *Fischer-McReynolds v. Quasim*, 101 Wn. App. 801 (2000). If the nonmoving party cannot demonstrate that factual issues exist, summary judgment is appropriate. Id. The nonmoving party cannot simply rely on argument and the pleadings, but must come forward with admissible evidence. CR 56(c). Despite statements in the pleadings and arguments to the contrary, Sakkarapope has presented no admissible evidence to support his positions, and he as failed to raise a genuine issue of fact as to his claim that WSU breached his educational contract or that WSU deprived him of due process of law. This is particularly true given the fact that the court must strike his responsive pleading under CR 56(c). As a result. WSU is entitled to summary judgment affirming Sakkarapope's dismissal from his Master's program.

Decision and Order

Based on the foregoing discussion, it is hereby Ordered as follows:

1. WSU's motion for summary judgment dismissing that portion of Sakkarapope's Petition for Review seeking judicial review of WSU's decision to terminate Sakkarapope from the IIDP will be granted.

2. That portion of Sakkarapope's Petition for Review arguably seeking review of WSU's decision relating to the accuracy and completeness of his educational records under FERPA will be dismissed.

3. WSU's motion for summary judgment dismissaing that portion of Sakkarapope's Petition for Review seeking review of WSU decisions under the Open Public Records Act will be granted. Such dismissal will be without prejudice to Sakkarapope's right, if any, to bring an independent action under RCW 42.17.340.

4. WSU's motion for summary judgment affirming its decision dismissing Sakkarapope from his Master of Science in Statistics program will be granted.

5. Counsel for WSU shall prepare an order in accordance with CR 56 that is consistent with this decision and, if necessary, shall note the dame for presentment.

DATED: February 17, 2004.

s/David Frazier
JUDGE

Washington State University
Office of Registrar, P.O. Box 641035,
Pullman, WA 99164-1035

March 14, 2002

Benjapon Sakkarapope
430 NE Oak Street Apartment 2
Pullman, WA 99163-4143

Dear Mr. Sakkarapope,

This correspondence serves as your official notice of the University's Student Records Committee hearing regarding your request for records. **The hearing will be held at 2:00 p.m. on Wednesday, March 27, 2002.** The hearing will be conducted in the conference room located in the Office of Student Affairs, room 360, in the Lighty Student Services Building.

The University Student Records Committee is composed of one faculty member, one student member, one administrative member and on Student Affairs' faculty member, including the committee chair. This committee has been screened to ensure they are not biased in the matter.

As you know this hearing is not a forum to review the Graduate School's academic decision. It is an opportunity to review your request for student records and determine if the University has fulfilled that request.

An advisor of your choice may be accompany you to this hearing, but that person is not allowed to address the committee directly. You may submit additional written statements in advance of the hearing for the committee to review. This material, if any, should be submitted no later than 5:00 p.m. on Monday, March 25, 2002, to the Office of

the Registrar located in French Administration Building, room 346. The University's student Records Committee shall issues a decision within a reasonable time following the hearing.

Please contact my office at 335-2531 if you have questions about the hearing.

Sincerely,
s/ Richard A. Backes
Richard A. Backes
Senor Associate Registra

cc: Dr. Charlene Jaeger
Mr. Steve Vinsonhaler

Washington State University
Office of Registrar
P.O. Box 641035
Pullman, WA 99164-1035

April 5, 2002

Benjapon Sakkarapope
430 NE Oak Street Apartment 2
Pullman, WA 99163-4143

Dear Mr. Sakkarapope,

On March 27, 2002, you appeared before the Universiry's Student Records Committee to appeal whether the University had released all requested educational records related to the preliminary examination for your PhD program and your subsequent appeals of the result of that examination. Your letter to the committee dated March 21, 2002 lists fourteen instances of correspondence in which you request copies of you education records. Much of what you request in your letter to this committee have to do with lists of records, correspondence and evaluative criteria for which the University does not have a record. FERPA was designed to allow students to have access to their education records. Om most of the cases you cite in your letter, no education records exists. However, based in your comments in the hearing, we investigated several specific records that may be in existence. These specific records and the committee's conclusions are noted below.

1. Written Examination, including your answers and evaluator's comments. The written examination and your answers were located in your file in the Agricultural Economics department. These have been copied and are included in this letter. The committee has determined that no record of evaluator's comments exists now or ever existed.

2. Ballots from your oral examination of February 11, 2000. These ballots were released for you previously and did not contain any comments from committee members. This committee has determined that no record of committee member comments exists now though they may have existed at one time (though in sole possession of the committee member who created the comments). A copy of the examination decision dated February 11, 2000, is included in this letter.
3. Response to Dr. Herb Hill from Dr. Zhange regarding the four questions surrounding your appeal. This record does not exist and was never received by Dr. Hill and therefore never became part of your record nor the appeal process.
4. Memorandum from Dr. Ken Duft to preliminary examination committee members dated January 26, 2000. This memorandum does not exist and is no maintained by the University.
5. Records from your appeals of the preliminary examination results to Dr. Herb Hill of the Graduate School. All records related to this appeals have been released to you, including the e-mail and/or memorandum sent by committee members in response to Dr. Hill's four questions, and Dr. Hill's memorandum dates May 19, 2000. A copy of Dr. Hill's memorandum is included in this letter. No other records were created and/or maintained as part of this appeal.
6. Records from your appeal to the Committee on Graduate Student Rights and Responsibilities (CGSRR). All records related to this appeal have been released to you, including the e-mail correspondence from the Graduate School and the memorandum from the CGSRR to the Dean of the Graduate School dated September 19, 2000. A copy of the memorandum is

included in this letter. No other records were created and/or maintained as part of this appeal.

7. Records from your appeal to the Interim Provost. All records related to this appeal have been released to you including the memorandum from the Interim Provost to you dated February 1, 2001. A copy is included in this letter. No other records were created and/or maintained as part of this appeal.

With the inclusions in this letter, the University has fully complied with your request for the release of education records under FERPA. In addition, you are welcome at any time to peruse your own files both at the Graduate School and at the Agricultural Economics department.

Pursuant to WAC 504-21-080 you have a right to submit a written view regarding your education records to the provost, who shall review the appeal and take necessary action which may include reconsideration by the student records officer or inclusion of the written objection or summary thereof in such education records.

If you have questions regarding this committee's decision or would like to discuss it further, please contact me at 335-1139.

Sincerely,
s/ Richard A. Backes
Richard A. Backes
Chair, University's Student Records Committee

cc: Dr. Charlene Jaeger
Dr. Robert Bates
Mr. Steve Vinsonhaler
University Student Records Committee
File

Washington State University
Office of Registrar, P.O. Box 641035,
Pullman, WA 99164-1035

July 4, 2002

Benjapon Sakkarapope
430 NE Oak Street Apartment 2
Pullman, WA 99163-4143

Dear Mr. Sakkarapope,

I received your letter of June 22, 2002 stating you concerns about the release of your education records to you. You indicated that pages 13 through 16 of your written examination were missing. These specific pages are not maintained in your file in the Agricultural Economics department nor in your file in the Graduate School office. In understand, however, that these pages are being disclosed pursuant to your most recent public records request.

As stated in my letter of April 5, 2002, you may submit a written view regarding your education records to the provost, who shall review the appeal and take necessary action, which may include reconsideration by the student records officer or inclusion of the written objection or summary thereof in such education records.

If you have questions regarding this information, please contact me at 335-1649.

Sincerely,
s/ Richard A. Backes
Richard A. Backes
Chair, University's Student Records Committee
cc: Dr. Charlene Jaeger, Dr. Robert Bates,
University Student Records Committee, File

Washington State University
Office of the Vice President for Business Affairs,
432 French Administration Building, P.O. Box 641045,
Pullman, WA 99164-1045

July 19, 2002

Mr. Benjapon Sakkarapope
430 NE Ock #2
Pullman, WA 99163

Re: Public Records Request # 02-84

Dear Mr. Sakkarapope:

Regarding your letter of July 17, 2002, FERPA (Family Educational Rights and Privacy Act) prohibits the release or disclosure of student records or information contained in Student Records without the prior consent of the student to whom the information relates. I have enclosed the section of the United States Code that states that funding will be withheld from institutions that release personally identifiable information about students. Given the small number of students that took these examinations, the answers and comments contained in the examination are personally identifiable information. I have enclosed the relevant definitions of "personally identifiable information" from the CFR. I have enclosed a technical assistance letter from the FERPA Compliance Office at the Department of Education regarding this issue. If you require further information regarding the release of student education records, I recommend that you contact that office.

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-4605

Regarding the examination questions and answers that you requested, I have already asked that they be provided with the other material responsive to your Public Records Request. They will be reviewed for exempt material when they are received. As I said in my letter, all material specific to you will be provided, if the records are of examinations that you took, and the records still exist, I see no reason why they would not be provided. The department confirms that the examinations are unique to the academic year, but that some questions have been used more than once and may be used again in the future.

If you wish to appeal the denial of any student records, you may request a FERPA hearing through the Office of Student Affairs or the Registrar.

Sincerely,
s/ Kristen Pauli
Kirsten Pauli
Program Administrative manager

Washington State University,
Office of the Provost, P.O. Box. 641046
Pullman, WA 99164-1046

November 6, 2002

Benjapon Sakkarapope
430 NE Oak Street #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

Under The Family Educational Rights and Privacy Act (FERPA) students may request amendment of their educational records if they believe such records are inaccurate or misleading. When you raised questions regarding your educational records, the Vice President for Student Affairs officially appointed the Student Records Committee (Committee) and gave that Committee authority to consider your request. Importantly, the Committee was not authorized to review the University's academic decision to disenroll you from the doctoral program. WAC 504-21-040(3)(d) provides: "The student records committee shall not review any matter regarding the appropriateness of official academic grades." Additionally, the academic decision to disenroll you wad finalized on February 1, 2001.

As to your concerns regarding your student records, it appears that you did not directly dispute the accuracy or truthfulness of your educational record, but alleged that WSU had not disclosed certain student records to you upon request. The Committee, pursuant to WAC 504-04-010(4), held a brief adjudicative proceeding on March 27, 2002, to consider your claims. Following that hearing, it investigated your claims and was unable to locate records other than those that had already been provided to you by the Public Records Officer, the Graduate School, and the Agricultural

Economics Department*. It provided you with duplicate copies of some of those documents, and noted that you are welcome to peruse your own files at the Graduate School or the Agricultural Economics Department at any time.

I have reviewed the records related to your appeal of the FERPA hearing, including the tape of the hearing held on March 27, and the decision issued by the Student Records Committee on April 5, 2002. I find that the Committee was properly constituted and that it had authority to hear and decide your case. I find that the hearing was conducted in accordance with the procedure authorized by WAC 504-04-010(4). I also find that your educational file is accurate and complete, and affirm the Committee's decision as set forth in its letter of April 5, 2002.

This letter is the University's final decision in the matter of your student records. You have not additional rights to appeals this decision within Washington State University. You may, within thirty days of the date your receive this letter, appeal this decision to the Whitman County Superior Court in accordance with RCW 34.05.514 and 34.05.542.

Sincerely,
s/ Robert C. Bates
Robert C. Bates.
Provost and Academic Vice President

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* I understand that one additional document, a professor's personal notes upon your oral examination, we later located by the WSU Public Records Office pursuant to your public records request, and that record has been provide to you. You have not requested that document be made part of your official University file. Accordingly, it will not be made part of that file, unless you so request. Should any additional documents related to your public records requests be located, they will be provided to you by the Public Records Officer.

Washington State University,
Office of the Provost, P.O. Box. 641046
Pullman, WA 99164-1046

January 10, 2003

Benjapon Sakkarapope
430 NE Oak Street #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

On November 6, 2002, the Provost's Office informed you of the University decision in your case. In two separate letters you were explicitly told that you had no further appeal rights within the University and all procedural remedies had been exhausted at the administrative level.

I have received the correspondence you forward to President Rawlins and the Graduate School. It is clear from your letters that you understood that all your requests have been denied. The letters of November 6, 2002, also informed you of your right to appeal the University's final decision to the Whitman County Superior Court within 30 days. It is evidently your subsequent correspondence that you understand that legal right, but continue to dispute the finality of the University's final action in this matter.

The University had no obligation to provide you with any further explanation and will no longer respond to your letters related to this matter. This matter is officially closed.

Sincerely,
s/ Robert C. Bates
Robert C. Bates.
Provost

United States Department of Education
Office of the General Counsel,
400 marlyland Ave., SW.,
Washington, D.C. 20202-2110

December 17, 2002

Benjapon Sakkarapope
430 NE Oak Street Apt. 2
Pullman, WA 99163-4143

Dear Mr. Sakkarapope:

I am in receipt of your December 5, 2003 letters to the Secretary and the General Counsel of the United States Department of Education (Department) wherein you request an adjudication under the Administrative procedure Act (APA) based upon a complaint you filed with the Department's Family Policy Compliance Office (FPCO).

Pursuant to the Department's requirements at 34 CFR Part 99, the Secretary has delegated his authority to investigate, process, and review complaints involving the Family Educational Rights and Privacy Act (FERPA) to FPCO. Accordingly, you must direct you complaint to FPCO as prescribed by the Department's regulations and FPCO's letter to you dated December 8, 2003. (Attached).

Please also be advised that the Department's regulations do not afford you with a reight to appeal or otherwise contest FPCO's decisions with regard to complaints filed under 34 CFR Part 99. Thus, you do not have right to an adjudication by the Secretary under the APA. Should you have any further questions, you should direct them to FPCO at 202-260-3887.

Sincerely,
s/ Edmond J. Trepacz, II
General Attorney

430 NE Oak #2
Pullman, WA 99163
Phone: 509-332-8911

January 7, 2004

Secretary Rod Paige
Office of the Secretary,
U.S. Department of Education,
400 Maryland Avenue SW,
Washington, DC 20202-4605

Dear Secretary Paige:

This letter serves as my written request for review of agency's denial my petition for an adjudication pursuant to the Administrative Procedure Act, 5 U.S.C. 554, and 34 CFR 99.60 et al. served upon the United States Secretary of Department of Education.

On December 5, 2003, I served upon you a petition for an adjudication pursuant to the Administrative Procedure Act, 5 U.S.C. 554, and 34 CFR 99.60 et al. to consider and review the decisions and actions made by the Family Policy Compliance Office (FPCO), the U.S. Department of Education, and Washington State University in the complaints of violations of rights under Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99, and to enforce the FPCO and Washington State University complying with statutory or regulatory provisions of FERPA.

On December 17, 2003, General Attorney Edmond J. Trepacz, II denied my petition on your behalf. I believe the denial letter contains inaccurate understanding of the matters brought before you and provides misleading interpretation and application of laws. I also believe the denial has violated my rights under the Administrative Procedure Act, 5 U.S.C.

554, and 34 CFR 99, as well as other provisions of relevant laws and the constitutions.

As indicated in his denial, the statement, "Accordingly, you must direct your complaint to FPCO as prescribed by the Department's regulations and FPCO's letter to you dated December 8, 2003," is misleading and does not show good faith of the Counsel as a professional in interpreting the status of the matters and my intention as described in the Petition dated December 5, 2003. The facts are that:

1. I did file my original complaint to the FPCO on September 27, 2002.

2. I did file my complaints to FPCO as prescribed by the Department's regulations and FPCO's letter to me dated November 27, 2002. The complaint was revised accordingly into nine separate allegations/complaints. See the Petition for An Adjudication filed with the General Counsel.

3. After my unsuccessful attempt to follow-up of the complaints over a year, it was my belief that the FPCO was sufficiently afforded opportunities to perform its duties as described in 34 CFR 99. I, then, timely served upon you the Petition for an adjudication pursuant to the Administrative Procedure Act, 5 U.S.C. 554, and 34 CFR 99.60 et al. on December 5, 2003. The Petition reached the Office of the General Counsel on December 8, 2003.

4. My last follow-up of the complaints with the FPCO was made on Septempber 18, 2003. I received no response. The FPCO never provided any written decision in regard to my nine complaints. Then, on November 17, 2003, I served upon the FPCO of my notification of its decisions and actions deemed denial.

5. The FPCO issued the letter dated December 8, 2003, as the counsel referred to, and instructed me to revise my complaints again; this simply means that the matter was unfairly forced to move back to the initial stage as of the FPCO's letter dated November 17, 2002. It is reasonable to believe that the FPCO's response dated December 8, 2003,

was made after it had learned that the Petition was already reached the Office of General Counsel. The response was not reasonable, and not made in good faith. The action of December 8, 2003, was to excuse itself from its duties and obligations and then unfairly put the blame on me.

6. On December 12, 2003, I made my objection to the FPCO's December 8, 2003, letter.

7. As of December 8, 2003, the status of the matter has been moved beyond the FPCO.

The comprehensive documentation in regard to the matters for your review was provided with the Petition for An Adjudication. Please obtain and secure the documents for your review from the Offices of the General Counsel and the FPCO.

I also believe that the statements, "the Department's regulations do not afford you with a right to appeal or otherwise contest FPCO's decisions with regard to complaints filed under 34 CFR Part 99. Thus, you do not have right to an adjudication by the Secretary under APA," are misleading and misinterpreting the regulation and the APA. Nothing in the regulation and the APA suggests or implies that I do not have the right. Nothing shows the FPCO is exempt from the APA. The officials of the FPCO are federal employees; then, their decisions and actions in the capacity of the federal employees are the subject matters under the APA. The FPCO is not an office of dictator under the Constitution of the United States of America. The conducts of the FPCO's officials are under the Secretary's authority and delegation.

Therefore, I request for your review of the denial made by your General Counsel, and the FPCO's decisions and actions in regard to my complaints. I also request you provide your decision with specific views/opinions and with explicit citation of laws in regard to my right under the FERPA and

the APA, and the matters described in the Petition and the Counsel's denial. Your views/opinion and decision shall include explicit justification of whether the FPCO and Washington State University have complied with its duties and the regulations.

Again, I request an adjudicative proceeding be promptly commenced. The place shall be held in your regional office in the State of Washington or nearby where is closer to my residence. In such case that an adjudication is not granted and/or your review is denied, I request the U.S. Department of Education timely notify me in writing, including any other administrative relief/review available other than judicial reviews under the Administrative Procedure Act.

Finally, I request the Department of Education maintain and secure all agency records of the matters in regard to my complaints for potential judicial reviews. The Department shall not remove, discard and/or destroy any part or whole of the agency records and related materials until all the dispute matters are legally finalized. If you need further information, please feel free to contact me. Thank you very much for your consideration.

Sincerely,
s/B. Sakkarapope
Benjapon Sakkarapope

United States Department of Education
Office of Innovation and Improvement,
400 Marlyland Ave., SW., Washington, D.C. 20202

January 20, 2003

Benjapon Sakkarapope
430 NE Oak Street Apt.# 2
Pullman, WA 99163-4143

Dear Mr. Sakkarapope:

This letter is in response to your December 19, 2003 letter to the United States Department of Education's (Department's) Family Policy and Compliance Office (Office) in which you allege that your rights under the Family Educational Rights and Privacy Act (FERPA) were violated. Specifically, you alleged that Washington State University (University) denied you access to certain of your education records. This letter also responses to your January 7, 2004 letter to the Secretary of Education requesting an appeal based upon your dissatisfaction with the December 17, 2003 letter from the Department's Office of the General Counsel advising you that you have no appeal rights under the Administrative Procedure Act or Department regulations.

As discussed in our December 8, 2003 response to you (see enclosed), FERPA does not require a school to provide information to a student that is not maintained in the student's education records, nor does FERPA obligate a school to create education records in response to s student's request. Without evidence that a University maintains specific education records, there is no basis for this Office to investigate the alleged failure by the University to comply with your requests for access to your education records. Our attempt at reviewing your complaint was hindered by the sheer volume of your submissions along with the presence of extraneous and irrelevant information. However, in an affort to assist you, we requested in several letters-including out

December 8, 2003 letter, that you revise your complaints to include only relevant supporting documents. Addiitonally, we offered you the opportunity to respond in writing within three weeks of your receipt of our December 8, 2003 letter, and further offered you the opportunity to discuss this matter with our staff via telephone on order to assist us in responding to your complaint and concerns. Despite our best efforts, you failed to contact this Office or to provide us with any additional evidence or information regarding your allegations as requested in our December 8, 2003 letter. Rather, you stated in your December 19, 2003 letter to use that you "have no reason and intention to make any further revision of [your] complaints" Therefore, we are closing this matter without a finding.

With regard to your January 7 letter requesting a review of the Department's denial of an adjudication under the Administrative Procedure Act (APA), the December 17, 2003 letter to you from the Office of the General Counsel (see enclosed) very clearly explains that you do n have a right to an adjudication by the Secretary under the APA and that no further action will be taken by the Department regarding your requested adjudication. As also explained to you in that same letter, you do not have a right to appeal or otherwise contest this Office's decision with respect to complaints filed under FERPA. Thus, in the absence of a legal right to appeal this matter, any further requests, appeals, or correspondence to the Department seeking to invoke legal rights that are non existence in this context will not be acknowledged.

I sincerely hope the above information provide is helpful in further explaining the scope and limitations of you rights under FERPA as they relate to this matter.

Sincerely.

s/ LeRoy S. Rooker

Director, Family Policy Compliance Office

Enclosure

FILED
JUN 08 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Plaintiff-Appellant, v. BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY; et al., Defendants-Appellees.	No. 04-35643 D.C. # CV-04-00074-JLQ Eastern Washington (Spokane) **ORDER**

Before: FERNANDEZ, RYMER, and BYBEE,Circuit Judges

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further fillings will be accepted in this closed case.

U.S.C. TITLE 5, PART I , CHAPTER 5
SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

§ 551. Definitions (Release date: 2004-01-16)

For the purpose of this subchapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; subchapter II of chapter 471 of title 49; or sections 1884, 1891–1902, and former section 1641 (b)(2), of title 50, appendix;

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or

prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;
(12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section;
(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and
(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

§ 554. Adjudications (Release date: 2004-01-16)
(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—
(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;
(2) the selection or tenure of an employee, except a [1] administrative law judge appointed under section 3105 of this title;
(3) proceedings in which decisions rest solely on inspections, tests, or elections;
(4) the conduct of military or foreign affairs functions;
(5) cases in which an agency is acting as an agent for a court; or
(6) the certification of worker representatives.
(b) Persons entitled to notice of an agency hearing shall be timely informed of—
(1) the time, place, and nature of the hearing;
(2) the legal authority and jurisdiction under which the hearing is to be held; and
(3) the matters of fact and law asserted.
When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues

controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

§ 555. Ancillary matters (Release date: 2004-01-16)
(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.
(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.
(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.
(d) Agency subpenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall

sustain the subpena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

U.S.C. TITLE 5, PART I, CHAPTER 7—JUDICIAL REVIEW

§ 701. Application; definitions (Release date: 2004-01-16)

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; subchapter II of chapter 471 of title 49; or sections 1884, 1891–1902, and former section 1641 (b)(2), of title 50, appendix; and

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

§ 702. Right of review (Release date: 2004-01-16)

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein

(1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or

(2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

§ 703. Form and venue of proceeding (Release date: 2004-01-16)

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a

court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

§ 704. Actions reviewable (Release date: 2004-01-16)
Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

§ 706. Scope of review (Release date: 2004-01-16)
To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—
(1) compel agency action unlawfully withheld or unreasonably delayed; and
(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

Chapter 34.05 RCW
ADMINISTRATIVE PROCEDURE ACT

RCW 34.05.010 Definitions.
The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar

statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

.....

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

.....

(11)(a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(12) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(13) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(15) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or

repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

.....

[1997 c 126 § 2; 1992 c 44 § 10; 1989 c 175 § 1; 1988 c 288 § 101; 1982 c 10 § 5. Prior: 1981 c 324 § 2; 1981 c 183 § 1; 1967 c 237 § 1; 1959 c 234 § 1. Formerly RCW 34.04.010.]

NOTES:

Effective dates -- Severability -- 1992 c 44: See RCW 42.41.901 and 42.41.902.

Effective dates -- 1989 c 175: "Sections 1 through 35 and 37 through 185 of this act are necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing public institutions, and shall take effect on July 1, 1989. Section 36 of this act shall take effect on July 1, 1990." [1989 c 175 § 186.]

Severability -- 1982 c 10: See note following RCW 6.13.080.

Legislative affirmation -- 1981 c 324: "The legislature affirms that all rule-making authority of state agencies and institutions of higher education is a function delegated by the legislature, and as such, shall be exercised pursuant to the conditions and restrictions contained in this act." [1981 c 324 § 1.]

Severability -- 1981 c 324: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to

other persons or circumstances is not affected." [1981 c 324 § 18.]

RCW 34.05.040 Operation of chapter if in conflict with federal law.

If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned.

[1988 c 288 § 104; 1959 c 234 § 19. Formerly RCW 34.04.930.]

RCW 34.05.080 Variation from time limits.

(1) An agency may modify time limits established in this chapter only as set forth in this section. An agency may not modify time limits relating to rule-making procedures or the time limits for filing a petition for judicial review specified in RCW 34.05.542.

(2) The time limits set forth in this chapter may be modified by rule of the agency or by rule of the chief administrative law judge if:

(a) The agency has an agency head composed of a body of individuals serving part time who do not regularly meet on a schedule that would allow compliance with the time limits of this chapter in the normal course of agency affairs;

(b) The agency does not have a permanent staff to comply with the time limits set forth in this chapter without substantial loss of efficiency and economy; and

(c) The rights of persons dealing with the agency are not substantially impaired.

(3) The time limits set forth in this chapter may be modified by rule if the agency determines that the change is necessary to the performance of its statutory duties. Agency

rule may provide for emergency variation when required in a specific case.

(4) Time limits may be changed pursuant to RCW 34.05.040.

(5) Time limits may be waived pursuant to RCW 34.05.050.

(6) Any modification in the time limits set forth in this chapter shall be to new time limits that are reasonable under the specific circumstances.

(7) In an adjudicative proceeding, any agency whose time limits vary from those set forth in this chapter shall provide reasonable and adequate notice of the pertinent time limits to persons affected. The notice may be given by the presiding or reviewing officer involved in the proceeding.

(8) Two years after July 1, 1989, the chief administrative law judge shall cause a survey to be made of variations by agencies from the time limits set forth in this chapter, and shall submit a written report of the results of the survey to the office of the governor.

[1989 c 175 § 3; 1988 c 288 § 108.]

NOTES: Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 34.05.482 Brief adjudicative proceedings -- Applicability.

(1) An agency may use brief adjudicative proceedings if:

(a) The use of those proceedings in the circumstances does not violate any provision of law;

(b) The protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties;

(c) The matter is entirely within one or more categories for which the agency by rule has adopted this section and RCW 34.05.485 through 34.05.494; and

(d) The issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through 34.05.479.

(2) Brief adjudicative proceedings are not authorized for public assistance and food stamp or benefit programs provided for in Title 74 RCW, including but not limited to public assistance as defined in RCW 74.04.005(1).
[1998 c 79 § 3; 1988 c 288 § 425.]

RCW 34.05.485 Brief adjudicative proceedings -- Procedure.
(1) If not specifically prohibited by law, the following persons may be designated as the presiding officer of a brief adjudicative proceeding:

(a) The agency head;

(b) One or more members of the agency head;

(c) One or more administrative law judges; or

(d) One or more other persons designated by the agency head.

(2) Before taking action, the presiding officer shall give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter.

(3) At the time any unfavorable action is taken the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The brief written statement is an initial order. If no review is taken of the initial order as authorized by RCW 34.05.488 and 34.05.491, the initial order shall be the final order.
[1989 c 175 § 23; 1988 c 288 § 426.]
NOTES: Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 34.05.488 Brief proceedings -- Administrative review -- Applicability.

Unless prohibited by any provision of law, an agency, on its own motion, may conduct administrative review of an order resulting from brief adjudicative proceedings. An agency shall conduct this review upon the written or oral request of a party if the agency receives the request within twenty-one days after service of the written statement required by RCW 34.05.485(3).
[1989 c 175 § 24; 1988 c 288 § 427.]
NOTES: Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 34.05.491 Brief proceedings -- Administrative review -- Procedures.
Unless otherwise provided by statute:

(1) If the parties have not requested review, the agency may review an order resulting from a brief adjudicative proceeding on its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(2) The reviewing officer may be any person who could have presided at the brief proceeding, but the reviewing officer must be one who is authorized to grant appropriate relief upon review.

(3) The reviewing officer shall give each party an opportunity to explain the party's view of the matter and shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing.

(4) The order on review must be in writing, must include a brief statement of the reasons for the decision, and must be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(5) A request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted.
[1988 c 288 § 428.]

RCW 34.05.494 Agency record in brief proceedings.
(1) The agency record consists of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. The agency shall maintain these documents as its official record.

(2) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in brief adjudicative proceedings or for the judicial review of brief adjudicative proceedings.
[1988 c 288 § 429.]

RCW 34.05.510 Relationship between this chapter and other judicial review authority.
This chapter establishes the exclusive means of judicial review of agency action, except:

(1) The provisions of this chapter for judicial review do not apply to litigation in which the sole issue is a claim for money damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.

(2) Ancillary procedural matters before the reviewing court, including intervention, class actions, consolidation, joinder, severance, transfer, protective orders, and other relief from disclosure of privileged or confidential material, are governed, to the extent not inconsistent with this chapter, by court rule.

(3) To the extent that de novo review or jury trial review of agency action is expressly authorized by provision of law.
[1988 c 288 § 501.]

RCW 34.05.534 Exhaustion of administrative remedies.

A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged, or available within any other agency authorized to exercise administrative review, except:

(1) A petitioner for judicial review of a rule need not have participated in the rule-making proceeding upon which that rule is based, have petitioned for its amendment or repeal, have petitioned the joint administrative rules review committee for its review, or have appealed a petition for amendment or repeal to the governor;

(2) A petitioner for judicial review need not exhaust administrative remedies to the extent that this chapter or any other statute states that exhaustion is not required; or

(3) The court may relieve a petitioner of the requirement to exhaust any or all administrative remedies upon a showing that:

(a) The remedies would be patently inadequate;

(b) The exhaustion of remedies would be futile; or

(c) The grave irreparable harm that would result from having to exhaust administrative remedies would clearly outweigh the public policy requiring exhaustion of administrative remedies.

[1997 c 409 § 302; 1995 c 403 § 803; 1988 c 288 § 507.]

NOTES: Part headings -- Severability -- 1997 c 409: See notes following RCW 43.22.051.

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

RCW 34.05.542 Time for filing petition for review.

Subject to other requirements of this chapter or of another statute:

(1) A petition for judicial review of a rule may be filed at any time, except as limited by RCW 34.05.375.

(2) A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

(3) A petition for judicial review of agency action other than the adoption of a rule or the entry of an order is not timely unless filed with the court and served on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action, but the time is extended during any period that the petitioner did not know and was under no duty to discover or could not reasonably have discovered that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter.

(4) Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark.

(5) Failure to timely serve a petition on the office of the attorney general is not grounds for dismissal of the petition.

(6) For purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record.

[1998 c 186 § 1; 1988 c 288 § 509.]

RCW 34.05.558 Judicial review of facts confined to record.

Judicial review of disputed issues of fact shall be conducted by the court without a jury and must be confined to the agency record for judicial review as defined by this chapter, supplemented by additional evidence taken pursuant to this chapter.

[1988 c 288 § 513.]

RCW 34.05.570 Judicial review.

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

[2004 c 30 § 1; 1995 c 403 § 802; 1989 c 175 § 27; 1988 c 288 § 516; 1977 ex.s. c 52 § 1; 1967 c 237 § 6; 1959 c 234 § 13. Formerly RCW 34.04.130.]

NOTES: Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 34.05.590 Incorporation of other judicial review provisions.

Proceedings for civil enforcement are governed by the following provisions of this chapter on judicial review, as modified where necessary to adapt them to those proceedings:

(1) RCW 34.05.510(2) (ancillary procedural matters); and

(2) RCW 34.05.566 (agency record for judicial review).

[1988 c 288 § 521.]

Chapter 504-04 WAC

PRACTICE AND PROCEDURE

Last Update: 11/22/89

PART I GENERAL PROCEDURAL RULES

WAC 504-04-010 Matters subject to brief adjudication. The following proceedings are matters to be treated as brief adjudications pursuant to RCW 34.05.482 through 34.05.491:
(1) Student conduct proceedings. The procedural rules of chapter 504-25 WAC apply to these proceedings.
(2) Appeals of residency determinations. If a hearing is required by law or constitutional right, appeals of residency determinations under RCW 28B.15.013 are brief adjudicative proceedings conducted by the office of admissions.
(3) Appeals of parking violations. Appeals of parking violations are brief adjudicatory proceedings conducted pursuant to applicable rules. See WAC 504-17-240 and 504-18-170.
(4) Hearings on student records. Hearings pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g are to be brief adjudicative proceedings conducted pursuant to the rules of chapter 504-21 WAC.
(5) Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the office of scholarships and financial aid.
(6) Emergency withdrawal of students. Proceedings to disenroll students for medical or psychological reasons are brief adjudicative proceedings conducted by the office of student affairs.
(7) Discipline and termination of student employees. When required by law, hearings for the termination of or imposition of disciplinary measures on student employees shall be brief adjudicative proceedings.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-010, filed 11/22/89, effective 12/23/89.]

WAC 504-04-020 Appointment of presiding officers for all adjudicative proceedings. The president of Washington State University or his or her designee shall have the power to appoint committees or members of the faculty, staff and student body to be presiding officers for formal and brief adjudicative proceedings. The term "presiding officer" as used in this chapter shall be read in the plural when the context demands.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-020, filed 11/22/89, effective 12/23/89.]

PART II PROCEDURAL RULES FOR FORMAL PROCEEDINGS

WAC 504-04-110 Adoption of model rules of procedure for formal proceedings -- Exception. In formal proceedings pursuant to RCW 34.05.413 through 34.05.476 Washington State University adopts the model rules of procedure adopted by the office of administrative hearings, chapter 10-08 WAC, with the following exception:

WAC 10-08-190 Adjudicative proceedings, cameras-recording devices.
See WAC 504-04-120 which determines the use of cameras and recording devices at adjudicative proceedings. Other procedural rules adopted in this title and this chapter are supplementary to the model rules. In the case of a conflict between the model rules and procedural rules adopted by Washington State University, the procedural rules adopted by the university shall govern.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-110, filed 11/22/89, effective 12/23/89.]

WAC 504-04-120 Confidentiality of student, faculty and staff formal adjudicative proceedings. In formal

adjudicative proceedings, the presiding officer shall have the power to close all or part of the hearing to public observation. The presiding officer shall have the power to impose reasonable conditions upon observation of the proceeding. The presiding officer also shall have the power to regulate the use of photographic and recording equipment. In the case of hearings involving discipline, termination, or medical withdrawal, hearings will normally be closed to public observation.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-120, filed 11/22/89, effective 12/23/89.]

WAC 504-04-130 Advising and representation of parties. Any person whose rights are in issue in a formal adjudicative proceeding shall have the right to have an adviser present during any stage of the proceedings. However, only persons admitted to the practice of law in the state of Washington shall be permitted to act as a representative at the proceedings. The presiding officer shall have the power to impose reasonable conditions upon participation of advisors and representatives.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-130, filed 11/22/89, effective 12/23/89.]

WAC 504-04-140 Discovery. Discovery in formal hearings may be permitted at the discretion of the presiding officer. In permitting discovery, reference shall be made to the civil rules applicable in court proceedings for guidance. The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-140, filed 11/22/89, effective 12/23/89.]

Chapter 504-21 WAC

UNIVERSITY POLICY ON STUDENT EDUCATION RECORDS

Last Update: 9/13/01

WAC 504-21-010 University policy on student education records. Public Law 93-380, the Family Educational Rights and Privacy Act of 1974, requires that the university adopt guidelines concerning the right of a student to inspect his or her education records, and guidelines concerning the release of personally-identifiable information to third parties. The act further provides that such a student has the right to a hearing in order to provide for the correction or deletion of inaccurate, misleading or otherwise inappropriate data. The act also provides that students be informed of the types of education records maintained by the university that are directly related to students.

Consistent with that act, this policy on student education records is established to insure that information contained in such records is treated in a responsible manner with due regard to the personal nature of the information. [Order 77-1, § 504-21-010, filed 5/2/77.]

WAC 504-21-020 Definition of a student. A student is defined as any person who is or has been officially enrolled at Washington State University and with respect to whom the university maintains education records or personally-identifiable information. [Order 77-1, § 504-21-020, filed 5/2/77.]

WAC 504-21-030 Education records -- Student's right to inspect.

(1) A student has the right to inspect and review his or her education records. A list of the types of education records maintained by the university and the record locations may be

obtained by the student at the office of student affairs or at the registrar's office.

(a) For purposes of this chapter the term "education records" means those records, files, documents and other materials which contain information directly related to a student.
(b) The term "education records" does not include:

(i) Records of instructional, supervisory and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute or the maker's administrator.
(ii) Records of the university police department which are maintained by the law enforcement unit of WSU that were created by the WSU law enforcement unit for the purposes of law enforcement.
(iii) Records made and maintained in the normal course of business which relate exclusively to the person's capacity as an employee and are not available for any other purposes. Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under this paragraph.
(iv) Records on a student which are created or maintained by a physician, psychiatrist, psychologist or other recognized professional or para-professional, acting in a professional or para-professional capacity, or assisting in that capacity and which are created, maintained or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment. Such records can be personally reviewed by a physician or other appropriate professional of the student's choice. In addition, health care information may be disclosed if authorized by state law.

(v) Records that contain information about an individual after he or she is no longer a student at that agency or institution.

(2) Recommendations, evaluations or comments concerning a student that are provided in confidence, either expressed or implied, as between the author and the recipient, shall be made available to the student, except as provided in this subsection.

(a) The student may specifically release his or her right to review where the information consists only of confidential letters and recommendations respecting:

(i) Admission to any educational institution, or

(ii) Employment application information and documents filed and maintained at the student's request at the university office of career services and placement.

(iii) Receipt of an honor or honorary recognition.

(iv) Faculty evaluations and other education records placed in departmental files where the department serves in a placement or referral capacity.

(b) A student's waiver of his or her right of access to confidential statements is valid only if:

(i) The student, upon request, shall be notified of the names of all persons making confidential statements concerning him; and

(ii) Confidential statements shall be used solely for the purpose for which they were originally intended; and

(iii) Such waivers are not required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from the university.

(iv) The waiver is made in writing and signed by the student, regardless of age.

(c) Recommendations, evaluations or comments concerning a student that have been provided in confidence, either expressed or implied, as between the author and the recipient, prior to January 1, 1975, shall not be subject to release to the student. Such records shall remain confidential and shall be released only with the consent of the author of the specific document. Such records shall be used by the institution only for the purpose for which they were originally intended.

(3) Where requested records or data include information on more than one student, the student shall be entitled to receive or be informed of only that part of the record or data that pertains to the requesting student.

(4) Students have the right to obtain copies of their education records. Charges for the copies shall not exceed the cost normally charged by a Washington State University copy center (except in cases where charges have previously been approved for certain specified services, such as transcripts and grade sheets).

(5) The registrar is the official custodian of academic records and therefore is the only official who may issue a transcript of the student's official academic record.

(6) Student education records may be destroyed in accordance with a department's routine retention schedule where the departmental procedure has been approved by the university records officer. In no case will any record which is requested by a student for review in accordance with these regulations be removed or destroyed prior to final disposition of the record request.
[Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-030, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-030, filed 5/2/77.]

WAC 504-21-040 Requests and appeal procedures.

(1) A request by a student for review of information shall be made in writing to the university employee or office having custody of the particular record.
(2) The person or office receiving a proper request for review of information must respond to a request for education records within a reasonable period of time, but in no case more than 45 days after the request has been made. A university employee or office which is unable to comply with a student's request within the above-stated time period shall inform the student of that fact and the reasons therefor in writing.
(3)(a) A student who believes his or her request has not been properly answered by a particular person or office should consult the appropriate dean or director having supervisory responsibility for the office.

(b) If a student remains dissatisfied after consulting with the appropriate dean or director, the student may then request a hearing before the university's student records committee. Following the hearing, the university's student records committee shall render its decision within a reasonable period of time. The decision of the university's student records committee shall be final, *except as provided in WAC 504-21-080.*

(c) In no case shall any request for review by a student be considered by the university's student records officer which has not been filed with that officer in writing within 90 days from the date of the initial request to the custodian of the record.

(d) The student records committee shall not review any matter regarding the appropriateness of official academic grades. (University Academic Regulation 104, "academic complaint procedure" should be followed in all cases involving grading disputes.)

(e) Eligible students are hereby notified of their right to file a complaint with the Department of Education

concerning any alleged failure of Washington State University to comply with the Family Educational Rights and Privacy Act of 1974, as amended. [Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-040, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-040, filed 5/2/77.]

WAC 504-21-050 Release of personally-identifiable records.

(1) The university shall not permit access to or the release of education records or personally-identifiable information contained therein, other than "directory information," (as defined in paragraph 5 of this section), without the written consent of the student to any party other than the following:

(a) University staff and faculty, including deans, department and program chairs and academic advisers, and faculty and students when officially appointed to a university senate or administrative committee, when the information is required for a legitimate educational interest within the performance of their responsibilities to the university, with the understanding that its use will be strictly limited to the performance of those responsibilities.

(b) Federal and state officials requiring access to education records in connection with the audit and evaluation of a federally- or state-supported education program or in connection with the enforcement of federal or state legal requirements which relate to such programs. In such cases the information required shall be protected by the federal or state official in a manner which will not permit the personal identification of students and their parents to other than those officials, and such personally-identifiable data shall be destroyed when no longer needed for

such audit, evaluation or enforcement of legal requirements.

(c) Persons or organizations, other than parents or legal guardians, providing to the student financial aid, or determining financial aid decisions concerning eligibility, amount, condition, and enforcement of terms of said aid.

(d) Organizations conducting studies for or on behalf of the university for purposes of developing, validating or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students by persons other than representatives of such organizations, and such information will be destroyed when no longer needed for the purposes for which it was provided.

(e) Education records may be used for legitimate academic research; provided that

(i) The procedures utilized and the reported findings do not violate the student's confidence;

(ii) Students' names will not be included in the study or in any way linked with the data;

(iii) Case histories and case records are sufficiently disguised to prevent identification of the individuals involved; and

(iv) The student's written permission is obtained where individual identification occurs.

(f) Accrediting organizations in order to carry out their accrediting functions.

(g) Any person or entity designated by judicial order or lawfully-issued subpoena, upon condition that a reasonable attempt has been made to notify the student of all such orders or subpoenas in advance of

the compliance therewith unless the subpoena is issued for a law enforcement purpose or is issued by a federal grand jury and the court or other issuing agency has ordered that the existence of the subpoena not be disclosed. Any university employee or office receiving a subpoena or judicial order for education records should immediately notify the WSU division of the office of the attorney general.
(h) Parents or legal guardians of a student who have established that student's status as their dependent according to Internal Revenue Code.

(i) An alleged victim of any crime of violence or nonforcible sexual offense, as they are defined in Appendix A to 34 CFR Part 99, shall be informed of the results of any disciplinary proceeding conducted by WSU against the alleged perpetrator of that crime with respect to that crime.

(j) To the office of the attorney general when disclosure is to comply with a judicial order or to provide legal advice.

(k) WSU may provide to parents or guardians of students under age twenty one information regarding violations of federal, state, or local laws or the university's conduct code where such violations concern the use or possession of alcohol or controlled substances and where WSU determines that those students have committed such violations.

(l) When either the student initiates legal action against WSU or when WSU initiates legal action against the student, WSU may disclose to the court any educational records of the student that are relevant to the legal action.

(m) Information may be disclosed in conformance with other exceptions to the prior written consent requirement of the Family Educational Rights and Privacy Act and implementing regulations found at 34

C.F.R. § 99. A copy of these regulations may be obtained from the Office of the Registrar.

(2) Where the consent of a student is obtained for the release of education records, it shall be in writing, signed and dated by the person giving such consent, and shall include:

(a) A specification of the records to be released,

(b) The reasons for such release, and

(c) The names of the parties to whom such records will be released unless the nature of the activity is such that advance identification of recipients is not possible such as employment assistance provided by the university office of career services and placement, in which case an effort will be made to identify recipients of information as they become known.

(3) In cases where records are made available without student consent as permitted by WAC 504-21-050 (1)(b), (c), (d), (e), (f), (i) and (j) the university shall maintain a record which will indicate the parties which have requested or obtained access to a student's records maintained by the university and which will indicate the legitimate interest of the requesting party. Releases in accordance with WAC 504-21-050 (1)(a) need not be recorded.

(4) Personally-identifiable education records released to third parties, with or without student consent, shall be accompanied by a printed statement indicating that the information cannot be subsequently released in a personally-identifiable form to any other parties without obtaining consent of the student unless such disclosures are made pursuant to WAC 504-21-050 (1)(g), (h), (j), (k), or (l) or the information released is directory information as defined in paragraph 5 of this section.

(5) The term "directory information" used in WAC 504-21-050(1) is defined as student's name (including any former name), local and permanent addresses and telephone numbers, electronic mail address(es), major and minor fields

of study, participation in officially-recognized activities in sports, weight and height of members of athletic teams, dates of attendance, enrollment status (e.g., undergraduate of graduate; full time or part-time), grade level, degrees, certificates, and awards received including the president's honor roll, and the most recent previous educational institution attended by the student. Students may request that the university not release directory information by filing a request with the registrar's office or the office of payroll services.

(6) Information from education records may be released to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other person(s). [Statutory Authority: RCW 28B.30.150. 01-19-027, § 504-21-050, filed 9/13/01, effective 10/14/01. Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-050, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-050, filed 5/2/77.]

WAC 504-21-060 University records. All university employees or offices who have custody of education records will develop procedures in accord with WAC 504-21-010 through504-21-060 . Any supplementary regulations found necessary by departments will be filed with the student records committee, which will be responsible for periodic review of policy and procedures. No records shall be kept that reflect a student's political or ideological beliefs or associations. [Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-21-060, filed 5/18/89, effective 7/1/89; Order 77-1, § 504-21-060, filed 5/2/77.]

WAC 504-21-070 Student records officer. The president's designee shall be responsible for reviewing unusual requests for information and for assisting in the interpretation of these

rules. The designee shall also be responsible for hearing appeals as defined in WAC 504-21-040. [Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-070, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-070, filed 5/2/77.]

WAC 504-21-080 Right of student to register objections. Any student who objects to the accuracy or truthfulness of any information contained in any university education record that is related to him or her may, after processing an unsuccessful appeal pursuant to WAC 504-21-040, submit a written view regarding his or her education records to the provost, who shall *review the appeal and take necessary action which may include reconsideration by the student records officer or inclusion* of the written objection or summary thereof in such education records; provided, however, no student has any right to post objections to academic grades and have the same appear on the student's academic record. [Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-080, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-080, filed 5/2/77.]

WAC 504-21-090 Notice of rights given under Family Educational Rights and Privacy Act of 1974. In accordance with the requirements of the Family Education Rights and Privacy Act of 1974, the university will make its best efforts to notify all students of the rights under this act. Such notification shall be done through the Washington Administrative Code procedure, notices to the campus newspaper and radio and television services, and such other publications and media that the university deems appropriate. [Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-090, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-090, filed 5/2/77.]

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

U.S.C. TITLE 20, CHAPTER 31

SUBCHAPTER III—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS: GENERAL AUTHORITY OF SECRETARY

§ 1232g. Family educational and privacy rights (Release date: 2004-08-06)

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(1) (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this

section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if

(i) the student is, upon request, notified of the names of all persons making confidential recommendations and

(ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt

of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or institution that were created

by that law enforcement unit for the purpose of law enforcement;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information

designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) (i) authorized representatives of

(I) the Comptroller General of the United States,

(II) the Secretary, or

(III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized

representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if—

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student.[1]

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of title 26;

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons; and

(J) (i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in subparagraph (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of

(A) the Comptroller General of the United States,

(B) the Secretary, or

(C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4) (A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6) (A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

(i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

(7) (A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 14071 of title 42 concerning registered sex offenders who are required to register under such section.

(B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.

(d) Students' rather than parents' permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance

The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate

assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

.....

§ 1231c. Advice, counsel, and technical assistance (Release date: 2004-08-06)

(a) State educational agencies, institutions of higher education

For the purpose of carrying out more effectively Federal education programs, the Secretary is authorized, upon request, to provide advice, counsel, and technical assistance to State educational agencies, institutions of higher education, and, with the approval of the appropriate State educational agency, elementary and secondary schools—

(1) in determining benefits available to them under Federal law;

(2) in preparing applications for, and meeting requirements of, applicable programs;

(3) in order to enhance the quality, increase the depth, or broaden the scope of activities under applicable programs; and

(4) in order to encourage simplification of applications, reports, evaluations, and other administrative procedures.

(b) Cost allocation, collection, etc., by local educational agencies

The Secretary shall permit local educational agencies to use organized and systematic approaches in determining cost allocation, collection, measurement, and reporting under any applicable program, if he determines

(1) that the use of such approaches will not in any manner lessen the effectiveness and impact of such program in achieving purposes for which it is intended,

(2) that the agency will use such procedures as will insure adequate evaluation of each of the programs involved, and

(3) that such approaches are consistent with criteria prescribed by the Comptroller General of the United States for the purposes of audit. For the purpose of this subsection a cost is allocable to a particular cost objective to the extent of relative benefits received by such objective.

(c) Dissemination

In awarding contracts and grants for the development of curricula or instructional materials, the Secretary and the Director of the National Institute of Education shall—

(1) encourage applicants to assure that such curricula or instructional materials will be developed in a manner conducive to dissemination through continuing consultations with publishers, personnel of State and local educational agencies, teachers, administrators, community representatives, and other individuals experienced in such dissemination;

(2) permit applicants to include provision for reasonable consultation fees or planning costs; and

(3) insure that grants to public agencies and nonprofit private organizations and contracts with public agencies and private organizations for publication and dissemination of curricula or instructional materials, or both, are awarded competitively to such agencies and organizations which provide assurances that the

curricula and instructional materials will reach the target populations for which they were developed.

(d) Annual report by Secretary

The Secretary's annual report shall contain a statement of the Secretary's activities under this section.

§ 1221e–3. General authority of Secretary (Release date: 2004-08-06)

The Secretary, in order_to carry out functions otherwise vested in the Secretary by law or by delegation of authority pursuant to law, and subject to limitations as may be otherwise imposed by law, is authorized to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OFWASHINGTON

BENJAPON SAKKARAPOPE,
Plaintiff,
vs. NO. CV-04-00074-JLQ
THE BOARD OF REGENTS,
WASHINGTON STATE
UNIVERSITY,
and
THE SECRETARY,
THE UNITED STATES DEPARTMENT OF EDUCATION,
Defendants.

COMPLAINT

Plaintiff alleges:

JURISDICTION AND VENUE

1. The District Court has jurisdiction under 42 U.S.C. §1983
2. This District Court has venue because the principal Defendant's main office is resided in Whitman County, Washington. The subject matter in this case arises occurred in Whitman County, Washington.

STATUS OF PLAINTIFF

3. Plaintiff is a national of Thailand.
4. Plaintiff had attended a graduate program at Washington State University (WSU) since Spring 1993 and is an eligible student by the FERPA definition.
5. Plaintiff has a property interest at WSU:
(A) Plaintiff's initial admission to a doctoral program in Marketing at WSU was arranged by the Department of Marketing as to initiate an institutional academic cooperation

between WSU and Prince of Songkla University, Thailand; and

(B) Plaintiff has full interest and intention to fulfill his advanced education at WSU.

6. An educational contract between WSU and Plaintiff was entered:

(A) The United States granted an F-1 VISA to attend a college at WSU on the basis of WSU's admissions to its academic programs;

(B) Plaintiff's initial admission to a graduate program at WSU was not made through a regular admission procedure and standard requirements.

7. WSU dismissed Plaintiff from the Individual Interdisciplinary Doctoral Program (IIDP) with a joint master program in Statistics in April 2000 and January 2003, respectively. The dismissals have been pending action for judicial review of administrative decisions under the Administrative Procedure Act, RCW 34.05, in the Superior Court of Whitman County, Case No. 03-2-00168-4.

STATUS OF DEFENDANTS

8. Defendant the Board of Regents, Washington State University, is a governing body of Washington State University and has obligation to impartially perform its duties under oath. RCW 28B.30; RCW 28B.30.115; RCW 28B.10.520. Washington State University is a state higher education institution receiving federal funds.

9. Defendant the Secretary of the U.S. Department of Education has duties to administer FERPA. The Family Policy Compliance Office (FPCO) is the Secretary's designee to (i) investigate, process, and review complaints and violations under the Act, and (ii) provide technical assistance to ensure compliance with the Act. 34 C.F.R. §99.60.

FACTS

10. Plaintiff had made requests for his educational records under FERPA for inspecting, reviewing and copying: (i) the records of the IIDP preliminary examination, and the adjudication of rights and responsibilities of Graduate

Student Code, and (ii) the records of Dr. Howard Grimes' decisions and actions, and of the examination of the Department of Agricultural Economics, from April 2000 to January 2003.

11. Plaintiff has exhausted all administrative proceedings to exercise his FERPA rights prior to this complaint is filed.

12. On December 5, 2001, Plaintiff requested for a hearing pursuant to FERPA before the University to fully release of his educational records of the IIDP preliminary examination and the adjudication of rights and responsibilities of Graduate Student Code:

(A) WSU adopted a brief adjudicative proceeding pursuant to RCW 34.05.485 et seq. to hear FERPA issues as described in WAC 504-04-010(4): "Hearings pursuant to the Family Educational Rights and Privacy Act, 20USC §1232g are to be brief adjudicative proceedings conducted pursuant to the rules of chapter 504-21 WAC."

(B) The hearing was conducted by the University's Student Records Committee (SRC), chaired by Richard Backes:

(i) The hearing was held on March 27, 2002 with one party presence at the hearing; and

(ii) The decision was made on April 5, 2002 that "[w]ith the inclusions in this letter, the University has fully complied with your request for the release of education records under FERPA."

(C) According to the University's Committee Manual, the functions in regard to FERPA are designed to a standing committee, "Registration and Records Committee." The SRC did not have authority to conduct a hearing in regard to FERPA.

(D) After unsuccessfully subsequent follow-ups to obtain the records and clarification of the April 5, 2002, decision, an appeal before the Provost dated September 23, 2002, to review the decision of April 5, 2002, pursuant to RCW 34.05.488, was filed.

(E) Without following the review procedure as prescribed in RCW 34.05.491, the Provost rendered his decision dated

November 6, 2002, concurring with the decision of April 5, 2002. No clarification and explanation was provided.

13. The University imposes a rule that: (i) in the March 14, 2002 letter, "[a]n advisor of your choice may accompany you to this hearing, but that person is not allowed to address the committee directly," and (ii) in the March 20, 2002, letter, "[t]he advisor is allowed to give you advice during the hearing, but is not permitted to directly address the committee or advocate on your behalf." Plaintiff believes this rule violates his right in the hearing proceeding and made objections as indicated in his letter dated March 11, 2002 and at the hearing of March 27, 2002. The objections were not properly denied pursuant to RCW 34.05.

14. In his letter dated March 18, 20002, Plaintiff made objections to disqualify any member of the SRC who had conflict of interest in the outcome of the hearing. Mr. Richard Backes, Chair of SRC, had conflict of interest, but did not exclude himself from conducting the hearing.

15. On September 27, 2002, a complaint was first filed directly with the Secretary of U.S. Department of Education. With a follow-up of November 18, 2002, Director Rooker provided a response dated November 27, 2002, asking for a revision of the original complaint on a given form and instruction, and in separate allegations.

16. Plaintiff revised the complaint by following the given instruction and filed nine separate complaints with the FPCO:

(A) On January 4, 2003, three complaints were filed:

(i) A complaint that the Plaintiff has been denied access to education records of the IIDP preliminary examination ended on February 11, 2000, and of the adjudicative proceedings under the Graduate Student Code, in violation of 34 CFR 99.10.

(ii) A complaint that Washington State University has destroyed the requested education records in violation of 34 CFR 99.10(e).

(iii) A complaint that Washington State University has denied responding to reasonable requests for explanations

and interpretations of the records of the IIDP preliminary examination ended on February 11, 2000, and of the adjudicative proceedings under the Graduate Student Code in violation of 34 CFR 99.10(c).

(B) On January 17, 2003, three complaints were filed:

(i) A complaint that the Plaintiff has been denied access to education records of the examination of the Department of Agricultural and Resource Economics. 34 CFR 99.10.

(ii) A complaint that the Plaintiff has been denied access to education records of the Committee on Graduate Student Rights and Responsibilities (CGSRR). 34 CFR 99.10.

(iii) A complaint that Washington State University has denied responding to reasonable requests for explanations and interpretations of the records of the CGSRR, Washington State University. 34 CFR 99.10(c).

(C) On March 15, 2003, one complaint was filed: A complaint that Washington State University has denied responding to reasonable requests for explanation and interpretation of the records of Dr. Grimes' memorandums of November 25 and December 18, 2002, and January 31, 2003. 34 CFR 99.10(c).

(D) On April 21, 2003, two additional complaints were filed:

(i) A complaint that Washington State University by the University's Student Records Committee (SRC), had conducted a hearing under FERPA in violation of 34 CFR 99.22.

(ii) A complaint that Washington State University has denied responding to reasonable requests for explanations and interpretations of the records of the University's Student Records Committee in violation of 34 CFR 99.10(c).

17. Actions by the FPCO responsive to the complaints:

(A) With a follow-up request of March 11, 2003, the FPCO by Bernard Cieplak, returned the above first seven complaints and asked for another revision on April 15, 2003.

(B) On April 21, 2003, Plaintiff resubmitted the same seven complaints to Director LeRoy Rooker, FPCO, because Plaintiff believed the complaints were reasonable and explicit

at the best he could do. Two additional complaints were filed.

(C) With a follow-up request of June 2, 2003, Director LeRoy Rooker, provided a response dated June 18, 2003, asking for more information. On June 23, 2003, Plaintiff provided the lists of more precisely requested records responsive to the FPCO's request.

(D) With follow-up requests dated September 18 and November 17, 2003. The FPCO did not timely provide a response.

18. On December 5, 2003, Plaintiff filed a Petition for an Adjudication before the Secretary of the U.S. Department of Education to enforce FERPA compliance under federal Administrative Procedure Act:

(A) On the same day that the Office of the General Counsel received the Petition (December 8, 2003), the FPCO issued a response to the follow-up letters of September 18 and November 17, 2003 requesting another revision of the complaints.

(B) Plaintiff notified the FPCO that the disputed matter was already moved beyond the FPCO since the Petition was filed. The FPCO was afforded more than reasonable time to fulfill its duties.

(C) On December 17, 2003, General Attorney Edmond J. Trepacz, II denied the application on behalf of the Secretary.

(D) On January 7, 2004, Plaintiff requested a reconsideration of the denial before the Secretary. The FPCO denied the request for a reconsideration on behalf of the Secretary and stated that "[t] herefore, we are closing this matter without a finding."

CAUSES OF ACTION

19. Washington State University (WSU) has deprived Plaintiff's rights under Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99:

(A) "Except as limited under §99.12, a parent or eligible student must be given opportunity to inspect and review the student's education records." 34 CFR 99.10(a)

(B) "The educational agency or institution,…., shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request." 34 CFR 99.10(b)
(C) "The educational agency or institution, …., shall respond to reasonable requests for explanations and interpretations of the records." 34 CFR 99.10(c)
(D) "The educational agency or institution,….., shall not destroy any education records if there is an outstanding request to inspect and review the records under this section." 34 CFR 99.10(d)
20. Washington State University by the University's Student Records Committee (SRC) has deprived Plaintiff's rights under FERPA by conducting a hearing of March 27, 2002 in violation of FERPA:
(A) "An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student." 34 CFR 99.21(a)
(B) "The hearing may be conducted by an individual,…. who does not have a direct interest in the outcome of the hearing." 34 CFR 99.22(c)
(C) "The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under §99.21. The parent or eligible student may, at their own expenses, be assisted or represented by one or more individuals of his or her own choice, including an attorney." 34 CFR 99.22(d)
(D) "The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision." 34 CFR 99.22(f)
21. The Family Policy Compliance Office (FPCO), the U.S. Department of Education, has deprived Plaintiff's rights to have the FPCO impartially perform its duties as described in 34 C.F.R 99.60(i) under Family Educational Rights and

Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. The Secretary by the FPCO has duties under 34 CFR 99.60 et seq. to enforce FERPA, but refused to finding facts and making determination.

22. Washington State University by Dr. Howard Grimes, Dean of the Graduate School, took actions terminating Plaintiff from his master program in Statistics in retaliation of Plaintiff from exercising his rights and in violation of rights and protections guaranteed to Plaintiff under the civil laws, statutes and Constitutions of the State and the United States.

EVIDENCE

23. The following evidence, but not limit to, will be used in the proceedings:

(A) Records of Petition for An Adjudication and attachments, and complaints. The Petition was filed with the Secretary, U.S. Department of Education, on December 5, 2003;

(B) The certified records, pleadings and discoveries in the case title: *Benjapon Sakkarapope v. State of Washington, the Board of Regents, Washington State University*, in the Superior Court of Whitman County, case no. 03-2-00168-4;

(C) Records of communications among Mr. Sakkarapope, the U.S. Department of Education and Washington State University; and

(D) Discoveries, other related records and witnesses.

DAMAGES

24. Washington State University and the FPCO have deprived Plaintiff's rights under FERPA and resulted in damages and substantial stigma to Plaintiff throughout his life and professional career:

(A) Any withholding, removing, and/or discarding Plaintiff's educational records has deprived Plaintiff's rights to inspect and review the truthfulness and integrity of the records utilized as the bases of WSU's decisions and actions, and to seek proper relief in the administrative and judicial proceedings.

(B) The Petitioner has standing to file complaints with the FPCO. As the result of that the FPCO refrains itself to

perform its duties and responsibilities to enforce FERPA compliance, Plaintiff cannot obtain his education records to seek other relief from the dismissals of the doctoral and master programs at WSU. The failure to act by the FPCO has deprived Plaintiff's rights under FERPA guaranteed by the Constitutions.

(C) The depriving of Plaintiff's rights under FERPA results in incomplete agency records of the IIDP preliminary examination, the adjudication of rights and responsibilities, and the dismissals of both doctoral and master programs for the pending judicial review, and limits Plaintiff's ability and opportunity to have a full, fair judicial review of such dismissals. The depriving of rights under FERPA creates substantial stigma to Plaintiff's life and liberty, career opportunity as well as personal reputation.

25. Washington State University by Dr. Howard Grimes, Dean of the Graduate School, took actions terminating Plaintiff from his master program in Statistics without due process of law in violation of rights and protections guaranteed to Plaintiff under the civil laws, statutes and Constitutions of the State and the United States. The depriving of rights also creates substantial stigma to Plaintiff's life and liberty, career opportunity as well as personal reputation.

RELIEF REQUESTED

26. Based on the facts, Washington State University and the FPCO have deprived Plaintiff's rights under FERPA. The termination of Plaintiff from his master program in Statistics has deprived Plaintiff's rights protected and guaranteed to Plaintiff under the civil laws, statutes and Constitutions of the State and the United States. Plaintiff has a property interest to complete his advanced degree programs at WSU. Therefore, Plaintiff is entitled to relief pursuant to 42 U.S.C. §1983 as well as other applicable provisions of laws as deemed fair, proper by the Court.

WHEREFORE, Plaintiff prays for judgment granting relieves as follows:

(1) Award fees and expenses incurred by that Plaintiff in connection with both administrative and judicial proceedings;

(2) Award monetary compensation for opportunity lost and damages in property interest, personal career and reputation, life and liberty from the deprivation of rights under FERPA as authorized by applicable laws and regulations; and

(3) Plaintiff seeks recovery from Defendants in a sum amount not less than the amount as equivalent to Plaintiff's loss of opportunity in obtaining his IIDP doctorate and master degree in Statistics for his professional career.

DATED this 24th of February, 2004.

s/Benjapon Sakkarapope
Plaintiff